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THE TEMPLE PRIMERS

THE WORKING CONSTITUTION OF THE UNITED KINGDOM
AND ITS OUTGROWTHS

By LEONARD COURTNEY
(LORD COURTNEY OF PENWITH)

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The WORKING CONSTITUTION of the UNITED KINGDOM AND ITS OUTGROWTHS

BY LEONARD COURTNEY

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PREFACE

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This primer is an adaptation of a work bearing the same title published in 1901. The necessary reduction in size has been achieved by the omission of the historical portions, and of the account given of local government, the land laws, education, etc., in Part II. of the larger book. One or two chapters have been somewhat condensed, whilst, on the other hand, the portions dealing with the Civil Departments, and with Protectorates, and Chartered Companies, have been expanded. As a consequence of these changes the order of the chapters has undergone considerable rearrangement, but in all other respects the text of the primer is substantially that of the larger edition.

The labour thus described has been effected by Mr. George Unwin, to whose assistance I was so much indebted in the preparation of the original work; and Mr. Unwin owes a number of valuable suggestions to the kindness of Mr. Graham Wallas.

Leonard Courtney.

Chelsea,
April 3, 1905.

HARVARD

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THE WORKING CONSTITUTION OF THE UNITED KINGDOM AND ITS OUTGROWTHS

PART I

THE LEGISLATURE

CHAPTER I

The Nation and the House of Commons

Flexibility of the Constitution. The Constitution of the United Kingdom has been rightly described as that of a republic veiled in monarchical forms, and containing in its organisation large survivals of aristocratic privilege. It has not, like the constitutions of the United States, Germany, France, etc., a fixed and definite shape, originally settled by some supreme authority especially charged with that solemn duty, and subsequently maintained as thus first settled until revised with equal solemnity by the same or an equal authority. Its special and almost unique characteristic is that it is subject to constant and continuous growth and change. It is a living organism, absorbing new facts and transforming itself. Its changes are sometimes considerable and even violent; and then for long periods the movement is almost imperceptible, although it is quickly realised when we compare the outcome presented at different points of time. The Constitution of

to-day is different from what it was fifty years since; and fifty years hence it will certainly be different from what it is to-day. It is the province of the historical student to trace the successive stages, through which the almost unchecked authority of the King became transformed into the almost unchecked authority of the national will; but the purpose of these pages will rather be to examine the situation as it now exists, including in such examination some attempt to detect the forces which are operative towards the production of the further changes which we know will in due course be developed.

Supremacy of Parliament. The fundamental fact of our Constitution is the absolutely unqualified supremacy of Parliament. In it is embodied the supreme will of the State; and though that will may declare itself in a different and even contradictory fashion from time to time, yet at any moment its expression is final and conclusive. The laws of the United Kingdom are made by Parliament, and the administration of public affairs, whether national or local, is everywhere subordinate to the authority of Parliament. The mode of subordination may and does vary. The formalities regulating the exercise of its authority have, in some cases, been made so difficult by the will of Parliament itself, that this authority, supreme though it be, cannot be used except on the rarest occasions; and the subordinate powers, thus protected from hasty interference, are sometimes spoken of as independent. But even the highest of them do their work subject to parliamentary control. Parliament, it must be repeated, is supreme, and Parliament consists of the Crown, the House of Lords, and the House of Commons. Parliament expresses its will in the conduct of a Ministry which it supports and maintains, and in legislative Acts agreed upon by the Houses of Lords and Commons, and approved by the Crown; but it is now nearly two hundred years since the Crown withheld its approval of a legislative Act agreed upon by the two Houses, and this approval has now for a long time been a formality that could not be withheld. The influence of the Crown, as must be explained hereafter, is now exercised in

a different fashion, and the possibility of the Crown refusing to assent to what has been agreed upon by both Houses may truly be described as inconceivable.

The two Houses may, however, differ between themselves; and the question arises how such differences are in fact settled. An agreement may be established by one of the two giving way to the other. The House of Lords consists of some five hundred and eighty noblemen, to whom additions are constantly made, whose legislative privileges descend exclusively through males, except in a few cases in which they pass through females to male descendants. The House of Commons, on the other hand, consists of six hundred and seventy gentlemen, elected by constituencies into which the kingdom is divided, for a period of seven years; but it may be dissolved, and a General Election ordered before the expiration of that period. It is obvious that the balance of judgment in the House of Lords may be altered by an addition of new members to its body or by a change or submission of opinion among existing members; whilst the balance of judgment in the House of Commons may be confirmed or altered as the result of a General Election. It is through a General Election that the authoritative means of settling a difference between the two Houses is now found. If the result of the Election is a House of Commons the majority of whose members support the line taken by the House of Lords, the difference disappears and the Lords have their way. If, on the other hand, the majority of the new House are of the same opinion as the previous majority, and the question in dispute has held a foremost place during the Election, it is now recognised to be the duty of the House of Lords to give way. Other methods of solving the difficulty of a difference between the two Houses may exist, and might be called into operation should necessity arise; but the one clear method of solution upon which all are at present agreed is that which has been stated.

The National Will. This conclusion is founded upon the principle that the will of the nation finds its most absolute

expression in the judgment of the House of Commons elected for the purpose of ascertaining its will upon some definite issue; and this principle is in fact now admitted by all parties as beyond controversy. No one ever questions the guidance of a General Election. The force which it expresses is a constant subject of appeal as the ultimate power of the State. Whilst the period of a House of Commons is running, and even when it is approaching its term, it is most customary to hear the advocate of a proposed law declare his confident belief that "the proposal has the support of the country," or "that the great majority of the nation is in its favour," or "that the constituencies throughout the kingdom will approve of it," and to find an opponent of the measure in question appealing in the same phrases and with equal confidence to the judgment of the nation as against it. Such language is not confined to debates in the House of Commons. It is in complete harmony with the opinions expressed in the current literature of the day. It embodies with great exactness the underlying thought of the mass of the people: first, that the country must be ruled in accordance with the will of the nation; next, that that will is most faithfully expressed in the result of any General Election; and thirdly, that the House of Commons as the embodiment of that will has a claim to predominance, at least until circumstances change so as to qualify its title as a faithful reflex of the national judgment.

The Ministry. The principle thus recognised, that a House of Commons issuing from a General Election is the most authoritative expression of the will of the nation, is vitally connected with the further principle that the administration of public affairs and the guidance of legislation should be entrusted to persons approved by a majority of the House. The work of the State is discharged by a very large number of men, who practically continue in office during good behaviour, and have a permanency of duties; but the heads of the several departments, who are responsible to Parliament for the conduct of them, are Ministers whose tenure of office must depend upon their command of the confidence of the

House of Commons. These high functionaries, styled Ministers of the Crown, are nominally appointed by the Crown, but each of them is, as a rule, a member of one of the two Houses, and they must, as a whole, possess the confidence of the Commons. This system of government presents a marked contrast to that adopted in the United States which rests to an equal extent on constant appeals to the national will. The chief officers of the American Government are elected independently by the people, and having a fixed tenure of office, do not require to be in harmony with either branch of the Legislature.

Change of Ministry. If the result of a General Election is that a majority of the new House is in disagreement with the policy of the existing Ministry, a change of Ministers necessarily follows. This was formerly secured by an address on the part of the new House to the Crown praying for a change, and the old Ministers continued to hold office until action of this kind was taken. If there is any uncertainty as to the composition of the new House, or if the majority, though definite, is not large, the existing Ministers may and do still wait for a formal adverse vote; but on four occasions, when the will of the nation appeared to be decisively expressed against the Ministers of the Crown, these resigned their functions immediately the results of the Election were known, without meeting Parliament. In 1868, when the question of the disestablishment and disendowment of the Irish Church was the issue submitted to the constituencies, Mr. Disraeli and his colleagues, who had opposed the proposal, resigned office as soon as the last election was declared. In 1874 Mr. Gladstone followed this precedent, and resigned without meeting Parliament; and in 1880 Mr. Disraeli again resigned the moment his defeat at the polls was complete. Once more, in 1886 Mr. Gladstone accepted the defeat of Home Rule at the polls, and resigned before Parliament met. These precedents were not followed in 1892, when the Ministers who were defeated reverted to the older practice, and retained office till the House of Commons

met and passed an adverse vote; the majority against them being indeed much less decisive than those on the former occasions. But the convenience of the practice begun in 1868, and thrice followed since, is incontestable, and it affords a most significant illustration of the supremacy of the authority exercised by the constituencies.

Resignation of Ministry. The accord between the House of Commons and the Ministers of the Crown, which must be established at the commencement of Parliament, if it does not already exist, remains the dominant principle as the period of Parliament goes on. This accord may be lost by changes in the conduct of the Ministry which are condemned by the House of Commons, or by a change in the House of Commons itself, shifting its balance from one side to the other. A vote of the House adverse to the judgment of the Ministry may indeed arise upon some secondary matter, or even through an accidental combination, and such a vote need not be regarded as significant, nor attended by serious consequences. A Ministry, conscious of growing divergence between itself and the House of Commons, or embarrassed by other difficulties in the conduct of administration or legislation, may, however, treat as serious an adverse vote which in itself is trivial, and the same results follow as if the vote had been a premeditated and indubitable declaration of want of confidence. Such a situation, however created, must be followed by a resignation of the Ministry, unless Ministers act on the belief that the House of Commons no longer reflects the balance of judgment of the constituencies, and accordingly advise the Crown to dissolve Parliament. The Crown has never, during the present or the previous reign, refused to act upon such advice, but it would be too much to declare that it could not be declined. In the self-governing colonies, where Parliaments have been established on the pattern of that of the United Kingdom, and where the Governor bears the same relation to his Ministers as the Crown bears to its Ministers at home, the advice to dissolve the Assembly corresponding

to the House of Commons has been often rejected. This has been done where the Assembly has been very recently elected, and the Governor for this, or for some reason in his judgment equally cogent, believes that it reflects the will of the constituencies, and that a new election is uncalled for, and would be vexatious. The Governor, however, in refusing to accept the advice to dissolve, must be prepared to accept the resignation of his Ministers; and his refusal can be maintained only where he finds other men ready to undertake the ministerial functions. Could similar circumstances arise in the United Kingdom, the Crown might be found acting, as its vice-regents have acted; and the fact that the Crown has not for such a long period so acted may be due to the fact that a dissolution has never been advised except under conditions making it reasonable and proper. The fundamental principle is in any case clearly established that the Ministers of the Crown cannot remain in office without the support and confidence of the House of Commons, unless the right of the House of Commons to represent the will of the nation is seriously disputed, and it is intended forthwith to appeal to the constituencies to decide the dispute.

Dissolution by the Crown. A principal correlative to that just enunciated may here be examined. Ministers must enjoy the confidence of the House of Commons to remain in office; and we have seen that colonial Governors have sometimes refused to accept the advice of Ministers who, having lost that confidence, had recommended a dissolution of the popular assembly. Is it true that, as long as Ministers retain the confidence of the House of Commons, they are entitled to remain in office, or may the Crown dispense with their services and call upon new Ministers to test the judgment of the nation by a dissolution? It was long understood that King William IV. exercised the right thus suggested when, in the autumn of 1834, he dismissed Lord Melbourne's Government, which undoubtedly possessed the support of the House of Commons, a step followed by the acceptance of office by Sir Robert Peel and a dissolution of Parliament.

The result was the election of a new House of Commons still hostile to Sir Robert Peel, who, after vainly struggling with an adverse majority, resigned ; and this result must be regarded as a condemnation of the dismissal of the former Ministry, if that is to be treated as an act of the Crown based upon an apprehension that Lord Melbourne and the House that supported him were both out of accord with the nation. It became clear, however, through the publication of Lord Melbourne's papers in 1889, that he himself suggested and almost invited the dismissal of the Ministry by the King ; and though it may be true that this action was not the outcome of an united Ministry, it is certain that Lord Melbourne's dismissal was not the spontaneous and unprompted act of the King. This case, strictly examined, is scarcely an exception to the rule which has prevailed throughout the whole period of the United Kingdom, that the Crown does not of its own mere motion dismiss a Ministry possessing the confidence of the House of Commons.

Precedents from the Colonies. The records of colonial history furnish us with a couple of cases—apparently only a couple—in which a Governor claimed and exercised the right not used by the Crown. In 1855 the Governor of New Brunswick dissolved the Legislature against the advice of the Ministry in order to obtain an expression of public opinion as to a recently passed prohibitory liquor law which was said to be working badly ; and the newly-elected Legislature justified his action by immediately repealing the law. The second case is that of the dismissal of Mr. Molteno and his colleagues in Cape Colony in 1877 by Sir Bartle Frere, who differed from them as to the conduct of military operations then in progress. In this case, however, a decisive majority of the existing House of Assembly was found to support Sir Bartle Frere's new ministry, and the necessity did not therefore arise of appealing to the electorate. These acts of colonial Governors are illustrations of what might conceivably be done by the Crown ; but they have no parallel in our history during this century.

CHAPTER II

The Electorate

Prime Authority of the Commons. The result of an analysis of the present working of the Constitution may be summed up in the phrase that the House of Commons is the prime organ of the national will. It is always unconsciously admitted that the ultimate spring of government rests in the will of the people, and this underlying principle finds expression in a hundred forms of familiar speech. In the election of a new House of Commons the sense of the country is taken; and the authority of the new House is accepted as indisputable in connection with the issue or issues presented at the election. The authority abides until some occasion arises when it is seriously questioned whether the view of the majority of the House remains in accord with the national will; and if it is disregarded on the ground that the majority has ceased to represent the policy approved by the nation, the dispute can only be solved by another General Election.

Extension of the Electorate. These principles have guided the action of all parties for more than a century, and it is to be noted that the same absolute acceptance of the result of the General Election, as an expression of the national will, has prevailed throughout the most striking changes in the essential facts of a General Election. Whatever the discontents of some or even of a large number in former generations concerning the distribution of electoral power, the use and habit of speech and thought accepted the House of Commons as the expression of the national will; the mass of each generation not disputing the circumstances of its time, if not always regarding them as beyond enquiry. Up to 1832 the majority of the members of the House of Commons (in England, as much as five-sixths) were elected by boroughs, and, in the bulk of them, the privilege of voting was restricted

to a few men, often absolutely subservient to the will of one man, the real owner of the borough, who sold or gave away its right to representation at his pleasure. Many, perhaps most, of these borough-owners were members of the House of Lords. A General Election before 1832 would seem to us now to be most defective and unreal as an appeal to the nation; yet men talked then, as they do to-day, of taking the sense of the country; and the authority of the House of Commons, when elected, was accepted as supreme. After the great change of 1832 there was a disfranchisement of the smallest boroughs, an enfranchisement of new large boroughs, and an increase of county members by division of counties; but the right of voting remained limited in boroughs to householders inhabiting houses of the annual value of £10 or upwards, while in counties the voting was confined to owners of real property and occupiers of the value of £50 or more. The change was enormous, but the voters remained a limited class, and the extreme disparity in the size of boroughs necessarily occasioned great inequalities in electoral influence among voters; but the House of Commons that issued from a General Election under the new conditions was accepted, as before, as an indisputable exponent of the national will. The changes of 1867–68 extended the privileges of voting in boroughs to all householders, irrespective of value; and the still greater change of 1884, conferring the same rights on householders in counties, and accompanying the extension of franchise by considerable redistribution of electoral districts, has left us using the same phrases and accepting the authority of the House of Commons with the same unqualified submission.

Influence of Public Opinion. This continuity in the regard paid to the House of Commons has sometimes led to the suggestion that the changes which have been made in the processes of its election have been really unimportant, because, under all conditions, what is called public opinion has permeated the House and has stamped it with its true claim to represent the national will. Even before 1832 there were

some open boroughs with large masses of voters; and the voting in counties, though confined to owners of real property, was free; and the manifestation of opinion secured in these elections insensibly influenced the patrons of the close boroughs and their nominees, thus producing a final resultant which, it is argued, did roughly correspond to the will of the nation. So again, after 1832, the opinion of those excluded from the vote affected the privileged voters and the representatives of privileged voters, producing once again, it is urged, a trustworthy presentment of the sense of the country. There is some ground for this reasoning; but if it be true, as suggested, that the opinion of outsiders influences the possessors of privilege, it is equally true that the possession of privilege influences outside opinion, and it may be doubted whether, on the whole, there is not a greater tendency to mould opinion in accordance with the influence of power, than to mould the exercise of power in accordance with the influence of opinion.

Single-member Constituencies. The alterations that have been made, at least since 1832, have been effected by adding new franchises to those already in existence, thus producing an overlapping of voting powers and an embarrassing accumulation of electoral privileges. The main facts, however, are that every male householder is entitled, after a prescribed term of residence, to vote in the borough or county in which he lives, and that every male owner of real property, of a certain small value, is entitled to vote in the county in which it is situate. There are other qualifications which need not be now stated, but it will be seen, from what has been said, that a man may be entitled to vote in more places than one. The last great arrangement of constituencies in 1884 proceeded on the plan of subdividing counties and the larger towns into constituencies, each returning one member, although a few of the larger towns, returning two members, were left undivided. The rearrangement involved also an approximation to equality in size (having regard to population rather than area) of constituencies, although, out

of tenderness to existing privileges, some small towns with inferior claims in respect to population were left with a member. A full examination would compel a comparison between the representation of Great Britain and of Ireland; but putting that aside for the present, it may be confidently asserted that the tendency in Great Britain is at present towards constituencies equal in size and with one member apiece, involving an absorption of smaller boroughs, some fresh arrangement of county divisions, and a subdivision of larger boroughs now returning two members.

Equality of Voting Power. Reverting to the rights of voters and the suggested possibility that a voter might be entitled to vote for more places than one, it may now be stated that a voter is entitled to vote in every county division and in every borough in which he has a qualification. Where a borough is subdivided, he can only vote in one of its divisions, though he may have qualifications entitling him to vote in more than one. The organisation thus described in outline is in itself suggestive of change. The tendency to equality of constituencies has been noted. A simplification of the franchise, at least to the extent of reducing all existing occupation franchises to one, may also be anticipated. An attack upon the ownership franchise may not be so imminent; but its practical importance would be destroyed, if the change were realised, which has been called for, taking away the right to vote in more than one constituency at any election. The agitation for this change has found expression in the formula "one man one vote," and the strength of the principle underlying this formula is confessed and insisted upon rather than contradicted by those who would add to it the words "and every vote an equal value." The ideal to which the authors of the formula and the authors of the addition are alike moving, is an equality of power on the part of the electors, but though the attraction of this idea is largely confessed, there may be a prolonged delay in ascertaining the form in which it should be realised.

Woman Franchise. A direct claim for the enfran-

chisement of women, possessing the same qualification as men, was first made in 1867; but it has never yet been adopted by any Ministry. Successive Governments have, however, treated it as an open question when not proposed as an embarrassing addition to their own legislative projects; and on all the occasions since the General Election of 1880 when it has been submitted to the House of Commons, as a question to be determined apart from ministerial influence, it has been approved by a majority of those voting. The argument that women have large, material, and sufficient influence without voting, is such as has always been used with respect to unenfranchised classes, but has been found ineffective to stem successive demands for the enfranchisement of men.

Defects of Electoral Machinery. The accuracy of the fundamental assumption, so universally made, that the House of Commons, on the morrow of a General Election, is an indisputable exponent of the will of the nation, must be examined in another light. It seems to be generally thought that, if the country were parcelled out into constituencies of equal size, each represented by one member (the form towards which it has been suggested our electoral organisation is moving), the balance of judgment among the members then elected would correspond with trustworthy accuracy to the balance of judgment among the whole mass of electors. To put the matter in other words, it is tacitly and almost universally believed that, if the issue presented to the nation was whether the policy of Mr. A or Mr. B should be adopted, the answer made by the members elected by the constituencies would be the same as that made if all the electors of all the constituencies voted together. It is upon this assumption that the result of a General Election is accepted as a declaration of the national will. This assumption is, however, one that would be often falsified in fact even though the most absolute equality of size were established among the constituencies; nor would the falsification arise from the circumstance that some voters were allowed to vote in more

than one constituency, supposing that privilege still to be maintained. The exercise of more than one vote operates equally in both the contemplated processes of ascertaining the national will, and therefore does not explain the discordance between the results of the two processes. Whenever that discordance appears, it will be found due to the fact that the distribution of opinion is not uniform throughout the nation, and that a division of the nation into constituencies, however honestly made, introduces an element of chance in the presentment of collected opinion. Owing to this unevenness of distribution of opinion throughout the country it may easily happen that the determination of the national judgment, as ascertainable by testing the constituencies separately, differs from what it would be if the nation could be consulted as one constituency.

An illustration of a simple character will make plain the arbitrariness of the assumption so universally made, and the reason why it must often be falsified. Suppose three contiguous constituencies, each with 5000 voters, making therefore 15,000 in all, and a choice between A and B being presented to the three constituencies, the first declared by 4000 in favour of A against 1000 for B; whilst each of the other two gave A 2000 and B 3000. The result would be that, on the vote of the three, A would have 8000 supporters as against 7000 for B, but, as represented by persons elected, B would have two supporters as against one for A. It will be seen that the miscarriage of representation shown in this example arises from the fact that the force of the party A is congested in the first constituency, and it would have been possible to have parcelled out the constituencies differently, so that the party A should have been in the majority in two, or indeed in all three of them—the last result, excluding party B from representation altogether, being only less unfortunate than the first, which gave it, though numerically inferior, the larger representation. In the absence of special political calculation and design, when, that is to say, constituencies are arranged from considerations of geographical convenience

only, a grave element of chance is evidently introduced in the working of the representative machinery of the country, organised in the way contemplated. It may indeed be said with some truth that when some hundreds of constituencies are arranged in a large area, errors of chance must counterbalance one another, but this only means that they would not all be accumulated on one side, and the way in which the balance of errors lies must remain a matter of chance. It is only through repeated practical experiments, enabling us to compare the relative strength of opinion as shown in the total votes cast in a General Election with that shown by the election of representatives in separate constituencies, that we can tell whether the arrangement of a country in constituencies has been effected in a fairly trustworthy manner. Any imputation of political design in the arrangement of the constituencies of the United Kingdom must be discarded; but the tests of experience already referred to suggest a doubt whether the existing arrangement is not somewhat lop-sided, tending now to exaggerate the victory, and now to lessen the defeat, of one party.

CHAPTER III

The Parties

How Party Government arises. If every act of the Crown must be supported by the responsibility of a Minister, and Ministers must possess the confidence of the House of Commons as the exponent of national judgment, it must be the continual care of Ministers to keep in agreement with that judgment. This result may be secured partly by studying the development of public opinion, and by shaping the course of the ministerial action, so as to move alongside of it, and partly by capturing and moulding that opinion, so that it shall support the actions of the Ministry. It must be their ambition to keep the House of Commons and the

nation together, and if a divergence should appear to be threatening, it would seem to be more far-sighted to cultivate the power that must be supreme at the next General Election. Ministers cannot however always maintain this detachment of spirit. They may clearly see that opinion is for the time irreclaimably moving away from them, and while cherishing the hope that in later years it may again move towards them, they may be schooling themselves to give way to others when the nation has spoken. This change in succession of popular judgment must, to be effectual, involve the existence of other men prepared and ready to take office; and if the previous analysis of the working of the constitution be correct, such reserves must have been at hand more or less definitely organised ever since the responsibility of Ministers to the nation through Parliament was established.

The Two-Party System. At a time when the House of Commons was in a predominant degree under the control of men of wealth, these reserves not unfrequently appeared as combinations of men brought together by family connections or accidental intimacy, rather than associations having, as the bond of union, agreement on a fixed set of principles of national policy and conduct. Yet even then the differences were often real, and men at least sought to distinguish themselves from one another by professions of divergent aims. Apart from family traditions or purely irresponsible ambition, men have always been and must be drawn into two camps of progress and of caution. The gradations of temperament must be infinite, and the same man not seldom passes from phase to phase. Yet there are always two masses, the one characterised by attachment to things as they are and by hesitation to change; the other, by a strong sense of existing shortcomings and defects, and by a readiness to entertain plans for their amendment. Names change, but Whigs and Tories, Liberals and Conservatives, Radicals and Constitutionalists are only different ways of describing the same essential divisions. Adherence to things as they are may

become less stubborn, the passion for reform less ardent, but the divergence of tendencies is never lost, though it may be less sharply manifested. Since the Reform Act of 1832 the line of demarcation has been repeatedly drawn afresh. Every change accomplished involves the assumption of new positions. Every new proposal of far-reaching change provokes a similar shifting. The objects of controversy are altered, the combatants pass to and fro, and still the two armies confront one another.

Groups within the Parties. It may even be said that year by year the two great divisions are more highly organised, and this development is not inconsistent with an organisation of sub-divisions which, if not absolutely new, has of recent years been carried to an unprecedented length. There have always been groups within the two great parties. Before 1832 they were frequently distinguished as clustering about some particular person. A certain number of members might even be known as the men of a great borough-monger whose seats they occupied. In the years following 1832 the Whigs or Reformers had among their following Mr. O'Connell and his Repealers, the members of the Manchester School, and the Philosophical Radicals, whilst the Conservative party of landowners, commercial magnates, and churchmen ran through all shades from High Toryism and unbending Protection, to the open mind of Sir Robert Peel. The Maynooth grant and the demands of Repealers disturbed parties then as they are disturbed to-day, nor was there wanting a migration of leading spirits who, seceding from a Ministry, remained some time on its flank, and then became embodied in the opposite ranks. Sub-divisions may have become somewhat more accentuated of recent years through the assumption of forms of organisation such as Church Committees, Service Committees, Labour Parties, etc., which meet more openly and with a greater affectation of independence than heretofore; but groups of a similar character have long been known and have perhaps exercised as much influence in the past as in the present on parliamentary life.

All these sub-divisions are apt to disappear when the two great parties are set in array, nor can it be positively said, when the experience of to-day is compared with what we know of the experience of fifty or sixty years since, that the difficulty has seriously increased of marshalling the parliamentary hosts in conflict.

Party Organisation. There can be no doubt as to the increased energy with which the two great parties are worked. The increase of railway and postal facilities, the comparative cheapness of paper and printing, the multiplication of newspapers, have all helped to develop this political activity. But it has been perhaps most stimulated by the multiplication of single-member seats of nearly equal size. The transformation of constituencies has greatly reduced the intensity and power of personal and family influence, and has opened up fields where the greatest effect is produced by working through the forms of political organisation. Central offices are maintained in London, and local committees are established in almost every constituency, between which and the central offices there are frequent communications. Literature, or what passes as such, is thus disseminated, and it becomes more profuse as a General Election approaches. Meetings, or as they are more commonly called, mass-meetings, are held in and through the parliamentary vacation, with the exception of a few weeks after the usual August prorogation, and even in the session itself they are not unknown. To these meetings the leading political personages are drafted for the purpose of keeping up the fire of party zeal in every district. This unceasing and widespread activity is the newest development of party. Such men as the leaders of the House of Commons and of the Opposition might in a former generation deliver a couple of political addresses outside Parliament in the course of the year. The demands upon their energies have multiplied at least tenfold, whilst some members of the Government and of the Opposition find their main if not exclusive duty in urging upon provincial audiences the merits of their own party and the demerits of their opponents.

Existing Evils and their Remedies. The employment of the machinery thus kept in constant work cannot be said to be altogether free from evil effects. It is true that in a nation there must be forces of hesitation and of adventure; but corresponding moods exist in the breast of every man, and the effort of the individual is not to give way to alternate fits of inaction and of rashness, but to maintain an equable course of regulated labour. The aim of education is to substitute continuity for discontinuity, an uninterrupted flow for mere gush and check. If national life is so organised that its manifestations are habitually characterised by discontinuity in successive periods of time, we may suspect some defect in its organisation, even though we may not be able to see a way to its remedy. Such discontinuity does not in fact exist in real life, and it is noteworthy how habitually the conduct of the parties in power is shaped so as to correct the discontinuity which party organisation tends to produce. Every party in power leans in the direction of the policy of its opponents. A Conservative Government is liberal, a Liberal Government is conservative. It is a common experience for each in turn to be condemned by its extreme followers for adopting the policy of its adversaries. The complaint is well founded, and it shows that both Liberal and Conservative are conscious that the true line of national movement follows a course between their exclusive fields of policy. If it were possible to organise the representation of national life so that it should be habitually embodied in something reproducing this central line of movement, we should be spared the falsity and the waste resulting from an organisation always producing more or less serious misrepresentations. Such a vision is at least conceivable. It must be made the subject of further enquiry before it can be declared to be in any degree practicable. Meantime it may be observed that, could it be realised, the Government of the future would have a promise of permanence and stability corresponding to the permanence and stability of the nation itself. It would be entitled to be called, what many governments vainly claim

to be, national. It would from time to time part with some elements and receive others. As years went by it would be entirely renewed, but there would rarely be a break in the continuity of its existence. Such a transformation cannot be accomplished at a jump. Any steps towards it must be gradual. It is enough if the movement gives us a real promise of approach.

CHAPTER IV

General Election

The Appeal to the Country. The supreme importance of a General Election has been frequently stated. Its verdict upon the question immediately at issue is accepted by all as conclusive. Some controversy may indeed arise as to the range of questions so decided. First, and most immediately important, is whether the Ministers in office at the time of the election should be retained in power or dismissed from their places. This is tested by the balance in numbers of the members returned, whose disposition towards the existing Government had been declared beforehand, and whose votes on this issue may be accounted as certain. The balance may however vary largely, and if it be small in number, the firmness of the position of the Ministers of the day cannot be reckoned as well assured. They may be safe against an immediate vote of want of confidence, but in the course of administration they may commit some act, or when they propose legislation to Parliament they may recommend some measure, either of which may be so displeasing to a fraction of their supporters as to turn the scale against them. In ordinary circumstances however the competitors for the support of the nation submit some definite claims for the support they desire, and the verdict of the constituencies may be relied upon as determining not merely the question whether Ministers should be retained or dismissed, but also whether

some prime object of policy recommended by them should be approved or condemned.

Election Addresses. There is generally no doubt as to what this paramount proposal is, although it may not be presented in the formal manner worthy of the occasion. Every candidate for the election issues an address to his own constituency containing, with more or less amplification, the grounds on which he makes his appeal; and the addresses of the leaders, who sit in the House of Commons, supply the main subjects of contention, with some indication of the order of their importance. These addresses are issued the moment the time of the General Election is determined, and the addresses of followers reproduce their leading features with the addition of declarations of loyalty to the party chief. Up to a comparatively recent time, the questions at issue were rarely expressed in a definite manner except in these addresses. The Tamworth manifesto was a letter of Sir Robert Peel to his constituents, and Lord John Russell in the same way wrote to the electors of the city of London. The members of the House of Lords watched elections in silence, and no attempt was made on the part of party conventions to draw up programmes of policy above or beside the action of the leaders of parties. Recently however Lord Salisbury, as Conservative leader, has issued an address to the nation at large, a precedent which may be said to have been set by Lord Beaconsfield in 1880, when he published an address in the shape of a letter to his Irish Viceroy, the Duke of Marlborough; while Lord Rosebery, the Liberal leader in 1895, laid his views before the country through the medium of speeches delivered in London after a dissolution had been announced though before the necessary official steps had been taken.[1]

Party Programmes. Such appeals from peers may

[1] In 1900 Lord Salisbury followed the course he had pursued in 1895; and Lord Rosebery, although no longer a titular leader, addressed the country under cover of a letter to a political friend who was a candidate for Newcastle-on-Tyne.

indeed be said to be novelties of form rather than of substance. The formation of party programmes and party conventions is quite new. The programmes thus put forth are not of the transcendent importance of the platforms formulated in the United States, when, on the eve of a Presidential Election, the delegates of the great political associations meet to draw up a declaration of policy, and to choose candidates for the presidency and vice-presidency. But they may be regarded as partaking in a minor degree of the same character. It is probable that in the course of time the proceedings in connection with these party conventions will be more formally regulated, but hitherto they have been rather loosely managed. The committees which exist in almost all constituencies are affiliated to a National Association, and they are invited to send delegates to the meetings of this association, one of which is held annually, while others are summoned for special occasions. The choice of delegates has not been closely watched, nor are credentials narrowly scrutinised. When the delegates meet a series of resolutions is generally submitted for their approval. Of late it has been found increasingly difficult to move additions or amendments to them; and it may be assumed that at no time are any substantial alterations effected. When settled, these constitute a party programme, but they cannot as yet be regarded as of binding authority. Instances have been known where the most formal and practically unanimous resolutions of the conferences have been quietly set aside by party leaders. Up to the present date the determination of the issues to be immediately fought has been made by parliamentary chiefs, but these latter must at least listen to the resolutions passed by their followers, and on one or more critical occasions they have yielded to their wishes. The annual national gatherings of these associations are supplemented by provincial conferences of the same character; and it is out of this apparently confused medley of resolutions and addresses that the leading issues of a General Election are at last evolved.

Selection of Candidates. The date of an election is

generally anticipated sometime beforehand. The extreme life of a House of Commons is seven years, and as it is very inconvenient to enter upon a session which must be broken off before its normal work is accomplished, the House of Commons rarely passes beyond its sixth year. It may be dissolved at a much earlier date; but if so, it is because some conflict has arisen requiring an appeal to the constituencies, and this seldom happens without sufficient signs of warning. A General Election is, in fine, an event for which preparations are commonly made. Candidates are sought for beforehand, and no constituency lacks them where the result of a contest is at all doubtful. Even where one party is so predominant as to make the issue certain, a candidate is often found willing to fight a hopeless battle, partly by way of experience, and partly to make himself known so that he may be chosen for a better chance elsewhere on some subsequent opportunity. There is a limit to the permitted expense of a General Election varying with the size of the constituency, but the total remains large enough to lessen the number of available candidates, especially as the holding of the seat is necessarily attended with some annual charges. If a dweller in the constituency is possessed of adequate means, and is prepared to accept unhesitatingly the party programme, he has a fair chance of being accepted as a suitable candidate, because although he may excite some jealousies, neighbourly feelings may give him more supporters.[1]

Central supply of Candidates. It very often happens that no local candidate is forthcoming or that the local committees cannot agree upon one, and in these cases recourse is had to the central organisation, where a list is kept of men ambitious to enter the House of Commons and serve their party. Two or three names may be sent down. Possible

[1] In some cases, constituents subscribe to defray part, or even the whole, of the election expenses of a candidate, and trade organisations and other bodies specially interested in a member representing their views may provide an income for him whilst serving as member.

candidates may themselves visit the local committees or a deputation may be sent up to London to interview them and make a provisional selection. In the end the man reckoned the most suitable is adopted as a candidate, and he issues his address. He may never have been heard of in the constituency before he was suggested as a candidate, but when adopted it becomes his business to make himself known by holding meetings, delivering speeches, answering questions, interviewing clubs and district committees, and indeed seeking the acquaintance of as many individual electors of prominence as he can reach. His own action may be in some degree restricted by the legal limit of his expenditure; but friends can give their labours gratuitously to any extent, and it has been found possible for central associations to flood the constituency with pamphlets and leaflets, and even to be the means of introducing auxiliary speakers to win over by their arguments doubtful and neutral voters.

Party character of contest. This kind of help tends to develop what is already sufficiently apparent. It binds together all the contests in the several constituencies, so as to make them portions of one campaign between two opposing armies, and though here and there fights may be so disconnected from the general fray as to have characters of their own, these exceptions are too few to affect the meaning of the whole. Such at least is the case in Great Britain. In the greater part of Ireland General Elections have turned in recent years upon the one issue of parliamentary autonomy; and though the elections of the near future may show contests between different partisans of this autonomy, the issues fought in Ireland will still be foreign to the controversies of Great Britain, except so far as the latter are dominated by the same question of autonomy. For the present at least Ireland must be regarded as a backwater in the main current. In after years a unity of controversy may be re-established or established in the United Kingdom, and the characteristics of a General Election, that may now be noted in Great Britain, will, unless the methods of election are substantially changed,

be then noted everywhere. What is to be observed is that by every step of preparation, and by every successive incident of the actual contest, a General Election has become a marshalling of the drilled forces of the two great parties into a hostile array whenever the chances of fight present any appearance of equality, for the purpose of deputing to the House of Commons men who have succeeded in obtaining, in the several divisions of the kingdom, the greatest demonstration of numbers on their behalf; that those who are outnumbered in every area are, as far as direct representation goes, voiceless; that those who obtain the privilege of a voice do so under conditions giving no assurance that the voice is anything more than a declaration of the numerical preponderance of the hour on the issue of the day.

Inadequacy of representation. Taking into consideration the want of direct representation on the one hand and the uncertainty of direct representation on the other, the result of a General Election gives no promise that the aggregation of victors will be competent to deal with the new questions that must be developed as the days of the new parliament pass by, and no surety that any decision they may, whether competent or not, pronounce will correspond to the decision that would be pronounced by the nation. There is indeed, as has already been pointed out, no certainty that even on the prime issue of a General Election the majority of the votes of persons elected will be on the same side as the majority of the votes given by the electors; but there was at least an issue pronounced upon and decided within each constituency, and it may be said that for working purposes a balance of the constituencies is as good as a balance of the electors. But beyond that issue all is dark. Whenever a new question arises, and it may come very quickly, it cannot be said with certainty that the votes of members correspond either to what the constituencies would say, if appealed to again, or what the nation would say, if appealed to as a whole.

Hare's scheme of representation. The late Mr.

Hare conceived a plan for making the House of Commons an absolute representation of the electorate of the kingdom, and his scheme received the enthusiastic approval of Mr. John Stuart Mill, who saw in it "the greatest improvement of which the system of representative government is susceptible."[1] The idea of Mr. Hare was that if a certain definite number of electors agreed together to choose one representative, howsoever the electors were scattered throughout the kingdom, the man agreed upon would be an elected member of the House of Commons. It is unnecessary to explain the machinery devised for carrying out the idea; but the result if achieved would be that every member would be representative of a definite number of voters, and the members taken all together would exhaust, or nearly exhaust, all the voters of the kingdom. The House of Commons so elected would be a real microcosm of the nation, and the fraction of voters left over would be relatively minute. The nation at large would be thinking and acting in the House of Commons. All the elements of life in the one would be found in the other, and might be trusted to deal with new circumstances arising in the course of its existence much as the nation would deal with them; whilst the members, though thus accurately representative, would have a singular independence individually, since their titles would rest on the support of an aliquot part of all the voters of the nation, and men of honest and courageous conduct would have some faith in the continuance of this kind of support. However attractive this scheme may be to those who have mastered its meaning and working, it must be admitted that it is too revolutionary in principle and too intricate in machinery to be treated as within the range of possible adoption.

A simpler proposal. It may be doubted whether any one conversant with the circumstances of political life ever regarded Mr. Hare's scheme as feasible as a whole. Even Mr. Mill must be taken to have looked upon it as an ideal, towards the fulfilment of which slow and distant approaches

[1] J. S. Mill's *Autobiography*, p. 258

might be made. It is not a practical proposal to fuse all the constituencies into one, but it is open to discussion whether some five or six constituencies contiguous to one another might not be combined so as to obtain within their united area a representation of all the elements of political life working in it. If, for example, Manchester were treated as one constituency with five members instead of being sub-divided in five constituencies with a member apiece, it would not be difficult to introduce into it a mode of voting securing the result that the five members should represent all that is politically active and vivid in Manchester. Manchester would send itself to the House of Commons. The different classes and the different interests, local and national, predominant within it, would have voices. It has been shown by practical experiment that the machinery could be worked without difficulty, and the result, whatever its worth, attained. What could be done for Manchester could be done for other great crowded centres of population. The application within such limited areas of a method of securing the total representation of their electors cannot be condemned as impracticable, whatever other objections may be raised against it. The first perhaps would be that this method of representation, if applied at all, must be applied universally. The whole country should be parcelled out into constituencies admitting the application of the principle. This does not seem necessary or even expedient. If the places in which it is proposed to introduce the new method be so chosen as not to involve any great result of party advantage or disadvantage, there is no reason why a partial application should not be made, so that its working might be tested, before it was carried further. Nor would it be difficult to constitute such new constituencies with from three to seven members as not to involve the hazard of great party changes. The present political representation of London, and of the greater centres of population, is so varied, as to present from this point of view no difficulty in forming aggregations that would be admissible.

Advantages of this plan. As the division of parties

would be represented with fair accuracy in the membership of each multiple constituency, the division would remain fairly accurately represented in the aggregation of members of all together. There would in fact be no great party balance, and if therefore the system were applied to combinations which do not at present as a whole show a great party balance, the party result of the change might be neglected. What is important is, that instead of having so many members on each side, so bound and tied, so labelled and ticketed, so numbered as to be commonly mere pawns for the players, there would be sent to the House of Commons so many active and independent embodiments of the active and independent voters who chose them. The managers of party might feel dismayed at the prospect of such unmanageable elements. It cannot be denied that their task would be more difficult than it is now. One of the main purposes for considering the proposal is the increase of independent thought in the House of Commons, and the advantages and disadvantages of this result must be taken together. The drawbacks of the composition of the House of Commons as it is, must be compared with the drawbacks as it would be. It is not however believed that the difficulty of conducting business in the House of Commons would be seriously increased. The new freedom would bring a new sense of responsibility, and an appreciation of the conditions of practical life would remain a law among the members of the Legislature.

The List System. The single transferable vote has received most attention in England; but another method of securing Proportional Representation has found more favour on the Continent. It was first adopted in Ticino, and the example was speedily followed in several other Swiss cantons. Still more recently the same method has been adopted in Belgium, and the elections have been twice held on the new plan. Under this system any party may put forward a list of its candidates, and the voter gives his vote for the list he prefers. As lists may be put forth indefinitely this scheme gives great freedom of choice. But the single

transferable vote appears to have secured still greater individual freedom, and in considering the respective claims of the single transferable vote and the list system, we have to set off the alleged greater freedom of the first against the alleged greater simplicity of working of the second.

CHAPTER V

The Sanction of the Authority of the House of Commons

Control of the National Purse. The House of Commons has been described as the prime organ of the national will. Its authority is recognised as absolute when issuing from a General Election, and it has a *primâ facie* claim to predominance whilst it lasts which can only be temporarily disputed pending recourse to a new election to ascertain whether it continues to represent the national will. If it is asked on what this predominance rests, the common answer will be that it is only the expression of the right of a free nation to self-government; that the House of Commons is the voice of the nation, and to it every partial authority must yield. This may be the right answer to the question considered as a problem in political ethics; but it remains to be seen by what sanction this just authority is asserted and maintained. The clue is to be found in the exclusive rights of the House of Commons over taxation. Since the great civil war the Crown has never pretended to any right to impose a tax on the nation. Parliament, and Parliament alone, can authorise any levy of duties. The two Houses, however, have very unequal shares in this authority. The House of Commons claims—and this claim is allowed by the House of Lords—to originate all taxation. It claims more than this. Whilst it admits the right of the House of Lords to withhold its assent to any proposal of taxation sent up to it, it refuses to the Lords any power to modify or vary

such proposals, and though within the House of Lords this limitation of its power is denied, and action has been taken from time to time as if it were free to alter proposals sent up to it, no such action has been tolerated by the House of Commons since 1678; and indeed the Lords have now for a long time past abstained from sending down to the Commons any amendments dealing with the taxation of the people. Whatever claims the Lords may assert being thus confined to their own chamber, and never put to any test, may now without disrespect be regarded as an idle pretension. In the House of Commons alone proposals of taxation originate, and they must be accepted without change or rejected by the House of Lords.

Taxes granted annually. The power thus recognised as vested exclusively in the House of Commons is further supported by the practice of imposing a large proportion of the taxation of the country for one year only. The revenue raised by taxes of a permanent character is insufficient to meet the normal cost of government, and there would be a large deficiency, were not certain annual taxes annually renewed. The income-tax, when revived in 1842 by Sir Robert Peel, was imposed for a term of three years, and then for a second period of three years, and Mr. Gladstone in 1853 settled it for seven years; but this settlement did not stand the strain of financial necessities, and ever since the year 1860 the tax has been imposed for twelve months only and constantly renewed, often with variations of rate. The duty on the importation of tea is an example of an indirect tax which is also imposed annually. The facts that the revenue arising from such duties is annually required, that the proposals for them must originate in the House of Commons, and that the House of Lords practically confesses that it cannot alter a Tax Bill constitute a strong, but far from exclusive, illustration of the predominance of the House of Commons.

Abolition of Taxes. Out of the chain of circumstances thus stated, a larger claim over taxation has been

established even in recent years. The House of Commons has not only absolute mastery over necessary annual taxes; it has practically an absolute mastery every year over all questions of taxation, unless the House of Lords is prepared to throw the taxing machinery of the country out of gear. This extension of authority has been effected by bringing together in one Act proposals of taxation which were formerly introduced separately. In 1860 a Bill for abolishing the then existing duties on paper was passed by the House of Commons, but when sent up to the Lords was rejected in their House. This produced some excitement, and the step was denounced on the ground that maintaining a tax against the will of the House of Commons was next door to imposing a tax; but the Lords had acted within their legislative capacity, and there was no immediate remedy. In the next Session, however, the repeal of the paper duties was effected by a clause in the annual Bill providing for the necessary reimposition of annual duties; and if the Lords had any desire to maintain their action of the preceding Session they did not venture to throw out the general Bill submitted to them, and they could not change it. By tacking on a clause repealing a tax or a clause modifying a tax to clauses for the reimposition of absolutely necessary taxes the Commons attained complete control over the whole subject of taxation. The importance of the step thus taken may be measured by a consideration of the parliamentary situation some fifteen years earlier. Sir Robert Peel was carrying his Bill for the repeal of the Corn Laws through Parliament in 1846, and was watching with much anxiety its uncertain course in the House of Lords. He was prepared to appeal to the country against their decision had they rejected it; but it may be said with certainty that it never occurred to him to compel their acceptance of the abolition of taxes on corn by incorporating this abolition among the clauses of an annual Customs and Excise Bill. In his own mind he would probably have regarded such a proposal as unconstitutional, and his view would have been in harmony with the opinion of the day.

The action of 1861 quietly effected a change now beyond question.

Finance Bill. The policy of that action has indeed been carried further by both the great parties of the State. What used to be called the Customs and Inland Revenue Bill received in 1894 the name of the Finance Bill, when Sir William Harcourt embodied it in his extensive proposals on Death Duties; the Finance Bill being avowedly intended to include all the financial changes of the Session. In 1899 Sir Michael Hicks-Beach submitted to the House of Commons proposals altering the permanent provisions made for the reduction of the National Debt. Until then, the several arrangements that had been successively proposed for the redemption of the National Debt had been incorporated in separate Bills; but Sir Michael Hicks-Beach made his proposals in clauses forming part of the Finance Bill; and though the policy of this new departure was observed upon by a member of the Opposition, it was maintained by Sir Michael Hicks-Beach with the support of Sir William Harcourt. Nothing was said in the House of Lords on this change which imposed a new check on a power they might theoretically claim to exercise.

Control of expenditure. The House of Commons controls the taxation of the country. It does more. It has a power which may be pronounced even more effectual in establishing its predominance. Of the money raised by taxation not a penny can be spent (apart from the sums devoted to the service of the National Debt, the Civil List of the Crown, the salaries of Judges of the High Court, and to other purposes deliberately set above the necessity of annual approval—all which payments are ordered by standing Acts of Parliament) except under special and separate votes designating the services to be executed and the sums set apart for the execution of each. It may be noted in passing, that the House of Commons protects itself against itself by requiring that no vote of money shall be considered except on the proposition of a Minister of the Crown; but this safeguard

against irresponsible proposals does not touch the fundamental fact that the House of Commons gives its express sanction to each vote in turn, and then sanctions the application of the monies raised by taxation to the support of the several votes that have been passed. It is provided moreover that no money unspent, in respect of the vote to which it has been assigned, can be transferred to augment any other vote, or to meet a new vote, except in cases of sums voted for the several departments of the Army, or of the Navy, in which cases savings under one head may, with the consent of the Treasury, be applied to meet deficiencies under other heads. Moreover, the sums thus voted are voted for the financial year only, and whatever is left unspent at the end of the year lapses and is withdrawn. Lastly, a special department, that of the Comptroller and Auditor-General, the salaries of whose chiefs, like those of the Judges of the High Court, are placed above annual supervision, is charged with the duty of seeing that the monies voted are spent on the objects for which they are voted, and on nothing else, and of reporting on any divergence from this rule. All this may be summed up in the statement that the House of Commons votes annually and specifically what is required for the several services of government. It rests with the House of Commons to renew these votes every year, and without such renewal all the services of the country would come, at the end of every year, to an abrupt suspension.

Concurrence of Lords. Every detail of national expenditure thus originates in, and is supervised by, the House of Commons. Without its initiation nothing can be proposed, nor can anything be spent except as it expressly directs. It must not, however, be supposed that the House of Lords has not any right of formal sanction over expenditure. It has a power which might in case of necessity be invoked, though the attempt to use it with effect would involve consequences not easily contemplated. Whilst the House of Commons makes grants of expenditure in detail, and votes the money to provide for these grants, its separate resolutions

are gathered up in Bills from time to time during the parliamentary Session, and finally at the close of the Session are collected in an Appropriation Bill; and these Bills are, like other legislative proposals, sent to the Lords for their concurrence. The House of Lords must accept or reject each such bill as a whole. Not a word can be altered in them. Any attempt to send back such a Bill altered in any degree to the House of Commons would be met by a refusal on the part of the latter to look at it. Yet the concurrence of the Lords is necessary before the Bill becomes an Act, and until this is done money cannot be legally issued for any of the purposes that have been proposed.

Latent power of rejection. It has been said that the House of Lords might reject the annual Taxation Bill on pain of throwing all the machinery for raising money from the people out of gear. Similarly it might reject the Supply Bills, if prepared to arrest expenditure on every service, and to bring the general machinery of government to a stop. These are latent powers. If we cannot say that under no circumstances could any of them be used, we may still remember that no thought of using them has ever been entertained for centuries. The suggestion has been made in words, if not entertained as a near possibility, that the House of Commons should stop Supplies. Such a threat was heard before the great Reform Act of 1832. No one, however, can remember a suggestion that the House of Lords should refuse to assent to Supplies. The power is not dead. It cannot be called living.

Colonial money Bills. The exclusive and conclusive authority of the House of Commons over expenditure has long been practically established in the United Kingdom. This historic truth may however be qualified by the suggestion that it has not been disputed because it has not been abused, and that the reserved if dormant power of the Lords might be invoked to check abuse, were it proposed. Collisions have been prevented because there is a general understanding as to the provinces of action of each branch of the

Legislature, and because a General Election is recognised as being always at hand to solve any rising difficulty before it becomes too acute. In this connection, recurrence may again be made to colonial experiences, as illustrating, by their sharper trials, the safeguards enjoyed within the United Kingdom. In organising self-government within the colonies to which it has been given, a Lower House, generally called the Assembly, has been set up and invested with the rights and privileges of the House of Commons. A second House, the Council, was added, which was in a majority of cases made elective like the Assembly, though of a somewhat less popular character. There was early manifested a disposition on the part of elected Councils to claim a greater authority over money Bills than that exercised by the House of Lords, and in some cases the Council succeeded in obtaining the power of amending money Bills, or at least of sending them back to the Assembly with suggestions of amendment. In other cases the Council did not claim the power of amendment, but did exercise the power of rejecting money Bills where it was alleged that they had been abused by an incorporation in their clauses of proposals improperly included.

Two Victorian crises. The colony of Victoria has been richest in these experiences, and it may be instructive to examine two cases in its history. In 1865 the Assembly was bent on passing a protective tariff to which it was known the Council was hostile, and the Assembly inserted its tariff in the Appropriation Bill, and sent up the whole as one measure to the Council. The latter, unable to alter the Bill, laid it aside, whilst declaring its readiness to pass an Appropriation Bill, if restricted to the provision of money for the public service. The colony was thus left without the means of paying its officials, and Sir Charles Darling, the Governor, gave his sanction to the borrowing of money by the Government and the payment thereout of the sums that had been voted in the Appropriation Bill. Not only so, he sanctioned the levy of duties as proposed in the rejected tariff. These irregularities were immediately censured by the Colonial

Secretary, and the censure was quickly followed up by the recall of Sir Charles Darling. The Victorian Government thereupon resolved to make Lady Darling a grant of money which, as the wife of a private citizen, she could accept without breach of rules. The grant was voted by the Assembly, and included in an Appropriation Bill which was rejected by the Council. A long dispute lasting nearly twelve months followed, in the course of which the Ministry twice resigned and was twice recalled to office. At length, when the deadlock between the Houses was becoming very serious, Sir Charles Darling, who had been reinstated in the public service, withdrew on behalf of himself and his wife the acceptance of the grant, and the cause of the controversy thus disappeared. A later Victorian case is of special interest as having led to a pronouncement of constitutional doctrine on the part of the Home Government. The members of the Assembly receive payment for their services under a temporary Act. In 1877 the Assembly passed a Bill to continue such payment, and, to make assurance doubly sure, votes were included in the Appropriation Bill to meet the payment. The Council laid aside both Bills, and for some time the government of the colony was left unsupported by fresh supplies. The Governor was even driven to dismiss a number of civil servants. After many months of extreme agitation, the Council agreed to approve an Act continuing the payment of members till the end of the Parliament; and the Assembly withdrew the obnoxious votes providing for their payment from the Appropriation Bill. Both Bills passed, and the immediate conflict ended. Subsequently, however, the Ministry, having failed to pass measures which provided for the eventual victory of the Assembly in case of similar disputes in the future, sent a deputation to London to induce the Imperial Government to pass an Act for this purpose.

Sir Michael Hicks-Beach on the situation. They did not succeed in this mission; but Sir Michael Hicks-Beach, then Colonial Secretary, who had been not a

little embarrassed in some previous stages of the contest, sent a composing despatch to the colony, recommending submission to the principles observed at home—more especially (1) that the Assembly should "refrain from annexing to a Bill of Aid or Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill," (2) that the Council should "refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill," and (3) "that the Council should so transact its business that the wishes of the people as clearly and repeatedly expressed should ultimately prevail"; and Sir Michael Hicks-Beach concluded the despatch with the expression of an opinion that the Imperial Parliament would not interfere, unless the Council should refuse to concur with the Assembly in some reasonable proposal for regulating the future relations of the two Houses in financial matters in accordance with the high constitutional precedent to which he had referred, "and should persist in such refusal after the proposals of the Assembly for that purpose, an appeal having been made to the constituencies on the subject, have been ratified by the country and again sent up by the Assembly for the consideration of the Council."

Conclusions to be drawn. It will be seen that the concluding observation of Sir Michael Hicks-Beach is limited to legislation in respect to finance; but this limitation naturally arose from the circumstances with which he had to deal. It cannot be admitted as indicating any existing limitation of the principle that the House of Lords must defer to the will of the nation clearly expressed at a General Election upon an issue clearly presented. The principles enunciated by Sir Michael Hicks-Beach must indeed be regarded as strictly interdependent, and they may be summed up in saying (1) that the House of Commons should never tack to a money Bill legislation foreign to it, (2) that the House of Lords should never reject a money Bill, properly framed, and (3) that the House of Lords should defer to the authoritative expression of the national will. A breach of the first principle

on the one side may justify a disregard of the others on the other side, but as long as the third principle is faithfully observed, it is unnecessary to anticipate a breach of the first. Legislation need not be smuggled through the Legislature, when it can be regularly passed if willed by the nation after what must be regarded, in the life of a nation, as a moderate period. The discretion which has been developed in the past may be trusted to be maintained in the future. The House of Commons in the ordinary course exercises an unqualified authority over the amount and the destination of the expenditure of the country; and it can in the last resort exercise the supreme power of withholding all supplies, thus bringing the government of the country to a standstill. The House of Lords may indeed refuse to concur, and the House of Commons may refuse to initiate; but these powers have rested, and may long rest, entirely unused, as weapons that may conceivably be employed, but should never be wanted.

CHAPTER VI

How the Authority of the House of Commons may be contested

Authority of the Commons and its tests. It has been seen that, according to the developed usage of our time, the ultimate force of government is found in the will of the nation expressed in a General Election. It is no doubt true that the judgments of individual men, and even of masses of men, are liable to considerable change; and it may perhaps be admitted that, if what may be called an instantaneous vote could be taken at any moment, the result could scarcely be trusted as expressing a permanent stable judgment. A General Election however does not happen without some, generally much, previous preparation, and though the defects of the Ministers of the immediate past are necessarily more patent and more clearly appreciated than the chances of performance

by any successors, yet the conduct of a General Election must be recognised as in some measure educational, so that the result comes to be regarded as deliberate. Still it must be confessed that whilst knowledge is diffused, passion and prejudice are also developed during this appeal to the nation; and occasions must arise (it may be said, have arisen) when the result is the expression of a transitory judgment. The necessity of finality compels its acceptance at the time, but the impossibility of any stability remains, and may be quoted as a reason for questioning, disputing, and even denying, the authority of the House of Commons as time passes by. It has been pointed out how a colonial governor, questioning the representative authority of the Lower House of his Legislature, dismissed his Ministers possessing its confidence, and calling new men to his service dissolved the Assembly; and that the result was an approval of his action. A similar power may exist in the Crown, though it has long been dormant.

The Lords' appeal to the Country. The second chamber, the House of Lords, is however in practice the effective disputant of the continued authority of the House of Commons. It defers to the expressed judgment of an election; but on the questions that arise in intermediate periods it claims a large, if not an equal authority of its own. Has it a right to insist, with respect to any dispute thus arising during the life of a Parliament, that it shall be referred to the constituencies for decision between itself and the House of Commons? Lord Salisbury claimed this power in 1884, over the question whether a redistribution of seats could be insisted upon as a necessary adjunct to an extension of the franchise in counties, and Mr. Gladstone vehemently disputed the claim as a novel attempt to usurp authority in resistance to which he was prepared to make any sacrifice. The dispute was avoided before it proceeded to extremities, by arriving at an agreement on the redistribution of seats; and the issue between the claim and the denial remains unsettled. It is not at once evident how such a claim as

that made by Lord Salisbury can be effectively met, as long as it is made in good faith under conditions not outraging the common judgment. If resorted to as a mere device of obstruction, to stay the progress of legislation because it was disliked, and with no real ground for thinking it might be disapproved by the constituencies, it might provoke a strength of resentment outside, that would support a Ministry possessing the confidence of the House of Commons in resorting to extreme measures to enforce its way. This is only saying that if the House of Lords abused its power on one side, an abuse of power on the other might be provoked and sustained. But if the House of Lords puts aside a project of legislation through an honest, though it may prove to be a mistaken, apprehension of popular judgment, or even under honest doubt of what that judgment may be, it cannot be condemned as acting in excess of its duty. This expression of opinion must not be taken however as prejudging any question as to the proper composition of the House of Lords, or even as excluding the consideration of the expediency of other methods of settling disputes between the two Houses in respect of questions which are not of sufficient gravity and importance to require an express reservation for national judgment.

Obstruction in secondary issues. There are many matters of considerable though second-rate importance which could never become the primary ground of a national appeal; and there are other subjects on which a dispassionate judge might hold that the nation had spoken in its main decision, even though this was honestly doubted by a reluctant House of Lords. An illustration from past, though not distant, history may make the nature of the problem somewhat plainer. The eligibility of Jews to sit in the House of Commons was for many years a subject of contest between the two branches of the Legislature. Jews had been elected in more than one instance, so that the question was one of a practical character. The House of Commons again and again sent up Bills to the Lords to remove the disabilities of the Jews, which were as

often rejected by the Upper House, and the fact that successive Houses, however varying in their composition, maintained a consistent support of the Bill for removing the Jewish disabilities, showed that the will of the constituencies was in its favour. The Lords, safe in the second-rate character of the issue, persisted in their attitude, until at last they yielded to the advice of a Government of the same political complexion as their majority, and then only so far as to give each House power to admit Jews, keeping up the barrier of exclusion as regarded themselves. They have since removed this obstacle of their own accord, and Jews now sit freely in both Houses. But the example is noteworthy as illustrating the force of inertia which the Lords maintain in the parliamentary system. There are doubtless other questions now pending which remain unsolved through the operation of a similar sluggishness; and it may become a matter worth consideration whether the advantages of slow and cautious movement in respect of subjects of first-rate importance could be secured without suffering an indiscriminate delay in the settlement of secondary issues.

CHAPTER VII

Privileges of the House of Commons

Freedom from Arrest. The building up of the House of Commons has been traced through its several stages, and the measure of its paramount power explained. But before entering on an examination of its action as part of the legislative machine, something must be said of its authority and privileges considered by itself. Freedom of its members from molestation is evidently one of the first conditions of its efficiency; and it must possess power to prevent interference with this freedom, and to punish those who attempt to abridge it. The claim to immunity from arrest was at one time extremely general, and extended even to the servants of

members. It is now limited to their personal freedom during the sitting of Parliament and for forty days preceding and succeeding the Session. An arrest on a charge of crime was early recognised as outside the privilege, and a long series of cases has now established the principle that the House will not interfere where a member is committed by a judge of the High Court for contempt. With the abandonment of imprisonment for debt, freedom from arrest has ceased to be an important privilege; but it exists, and covering also freedom from molestation can be enforced both by an order of release on the one hand, and by the Speaker's warrant of commitment of any one guilty of breach of it on the other.

Freedom of Speech. Next to freedom from personal molestation, freedom of speech ranks among the privileges of the House of Commons. No member can be questioned in a court of law or elsewhere outside the House on anything he may have said in debate within it. In this connection the power of the House to exclude strangers from attending its debates may be noticed. Till comparatively recent times any member could enforce the exclusion of strangers by informing Mr. Speaker that he "espied" them; but the rule is now laid down that upon attention being called to the presence of strangers, the Speaker shall forthwith take the sense of the House on the question of their exclusion. To the same sentiment of irresponsibility may be traced the origin of the ancient rule making it a breach of privilege to publish any report of debates. This rule, which was severely enforced up to an advanced period of the last century, exists now only as a terror against an abuse of reporting. It has never been formally abandoned, but large facilities are now given for taking of reports, the publication of which may indeed be said to be part of the life of the House of Commons; and the old rule would never be invoked, except to punish false or malicious perversions of speeches.

Examination of Witnesses. It is not one of the privileges of the House of Commons to administer an oath

to any witness called to answer an examination before the House or any of its committees; but the statutory right was in 1871 conferred both on the House and Committees, and false evidence made liable to penalties of perjury. Oaths however are not administered by Committees except when their inquiries are of a judicial character, and it is not believed that a witness has ever been sworn before the House as a whole. Although witnesses cannot under ordinary circumstances be sworn, their attendance can be enforced, resort being had if necessary to Mr. Speaker's warrant under which a recalcitrant witness or any one in custody and so unable of himself to attend can be brought up for examination.

The Testing of Elections. The House of Commons has always tried to enforce the independence of election of its members. It declares every session that no peer may concern himself in the election of Members to serve for the Commons in Parliament; although it is admitted that peers frequently break this rule, and the Commons are without any means of enforcing it. The recognised usage of peers is to abstain from interference in elections after a writ has been issued; but there appears to be no ground for the distinction thus suggested. It seems probable that interference of any kind on the part of peers is an offence against the law of Parliament, and if a case arose in which it could be suggested that the determination of an election had been influenced by such interference, there might be ground for setting aside the return. The jealousy of the House has indeed at all times been watchful of the independence of elections, and formerly it strove to keep the control of everything respecting them in its own hands. A famous controversy thus arose in 1704, when one Ashby claiming to be an elector of Aylesbury brought an action at law against the returning officer for refusing to receive his vote. The Commons resented this appeal to the courts, and Ashby was ultimately committed to prison under the Speaker's warrant for contempt of their privileges. The Judges were divided, but the Lords as the highest court of appeal upheld the right to proceed at law. In the end a prorogation got

rid of the dispute, neither side yielding its claim. The larger privilege of the House to examine and determine the validity of the return of any member of its own body has not for centuries been contested; and the claims of petitioners against such returns were decided by votes of the whole House until a sense of the responsibility and partiality of such decisions caused the passing of Grenville's Act in 1770 remitting the inquiry into controverted returns to select committees of fifteen.

Issue of Writs. All this is now changed. A definite procedure has been prescribed by successive Acts, under which the rights of persons to be registered as voters are determined in the first place by revising barristers in the several constituencies, and then on appeal by Judges of the High Court, whilst the trial of election petitions has been remitted to two Judges of the High Court, serving on the rota appointed for the purpose. Although a doubt has sometimes been expressed on the point, it seems now certain that the House of Commons has abandoned all its privileges of testing returns. In this connection a special privilege of the House in respect of the filling of casual vacancies amongst its members must be noticed. At the commencement of a parliament, writs for the election of members are issued under the authority of the Crown, but if any vacancy occurs whilst Parliament is in existence, a writ is issued by Mr. Speaker. Formerly this could only be done when the House was in session and by its authority, but Mr. Speaker is now empowered by Statute to issue the writ when the House is not sitting, provided the vacancy is not caused by the resignation of a member.

Disqualification of Members. The House can thus order a new writ, but it can also abstain from making the order, and it has the power of declaring a seat vacant and of issuing a writ for a new election. No authority can interfere with it in either respect, but the House cannot disqualify any person from being elected, and a constituency may if so disposed return again the person who has been dispossessed,

and in the absence of a petition against him, supported by a decision of the election judges, his return would be valid. The House of Commons would be slow to repeat the controversy in which it was engaged with the electors of Middlesex over the return of Wilkes. In the settled and ordered procedure of the law courts is found a trustworthy defence of electors against registration officers, returning officers, and the House of Commons itself. At the same time, the House of Commons has often declared a seat vacant where a member has been proved guilty of some criminal offence, has escaped from justice, or has otherwise appeared disqualified from sitting; but as a writ for a new election has always followed, the constituency has the power of protesting against any injustice to its representative. It is not apparent what would happen if a constituency re-elected a felon, no other candidate standing and claiming the seat.

Possible abuses of Privilege. What has been written suggests certain cases in which the House of Commons, if so disposed, might adopt arbitrary courses without being checked. The House can declare a seat vacant, and a dispossessed member would look in vain to a court of law for redress, however unjust his eviction. The House might follow this up by refusing to issue a writ for a new election, and it could not be compelled to act otherwise. In the days of small boroughs, when corrupt practices had been proved in any contest and the seat had consequently been vacated, it was not uncommon to suspend the issue of a writ for a session, or even to the end of the current parliament, as a punishment to the constituency. Such cases have not occurred in recent years, and are indeed not likely to happen. Apart from declaring a seat vacant, the House has a right to suspend the service of any member, and under its own rules frequently exercises the right as a punishment for obstruction or other disorderly conduct. No outside authority could control it, if it carried this power further and suspended members because they offended the political sentiments of the majority, or even for more arbitrary reasons. Historical instances might be

cited of such abuses, and the safeguard against their occurrence lies in a deep-rooted sense of parliamentary principles to which leaders can effectually appeal to control the incipient violence of followers. The House can suspend from its service one or more members, or even a group of members. It is not long since action of this kind was indeed taken. The House can go further. It can declare seats vacant and abstain from issuing writs for new elections. If violence and counter-violence were permitted to run their course such fatal extremes might be reached, and party feeling sometimes runs high enough to occasion anxiety as to what will follow. Parliamentary tradition and habit may however be trusted. Individuals may still sometimes suffer from the disorderly clamour of an excited majority; but no definite action of a formal kind for silencing a member or extinguishing a minority need be apprehended.

Committal by Speaker's Warrant. The sanction which the House employs for the punishment of offenders against its privileges is committal to prison under a warrant of the Speaker for contempt. This warrant is however only valid till the end of the Session, when the offender must be released. Formerly fines were imposed, but as these could only be enforced by committal, and committal expired with the Session, the infliction of a fine was sometimes nugatory, and the practice has been long discontinued. Committal itself is indeed now most rarely resorted to, and the House has sometimes been content with a solemn warning addressed by Mr. Speaker to offenders at the bar, which would perhaps cease to be serious if it were not excessively rare. A warrant of committal for contempt is a sufficient answer to a writ of *habeas corpus*, the Judges refusing to go behind the warrant; but it would seem that if the warrant specified some action which on the face of it could not be construed as contempt, the Judges would be prepared to deal with it as insufficient. This is a contingency which must be regarded as one of an extremely speculative character.

CHAPTER VIII

The House of Lords: Past and Present

Origin of the House of Lords. It is not within the scope of this book to enter into an examination of the origins of the House of Lords. The early Norman and Plantagenet kings had their Great Council about them, some at least of whose members from time to time attested, if they did not confirm, their acts. The Council varied within elastic limits, sometimes consisting of little more than the principal officers of State, at other times comprising all the greater tenants, the bishops, and some of the principal abbots. As son followed father in his tenancy, so was the son summoned after the father to the Council. But the summons was not necessarily transmitted by descent. If not purely personal, it should be held as attached to the holding of the lands which passed, rather than to the family through whom the lands descended. It is indeed still suggested that one or two of the existing peerages are held by virtue of the possession of particular Honours—that is to say, of castles or lands so designated by way of pre-eminence, but the suggestion can scarcely be regarded as more than an antiquarian fancy. It is not easily to be believed that on the sale of any such Honour the purchaser would be admitted to sit in the House of Lords as a consequence of his purchase.

Summons of a Peer. In earlier times the summons was clearly dependent on the will of the king, although it may be admitted that the king would not omit to summon any of his greater tenants or barons, especially where the tenant had been admitted to inherit from a father who had been summoned. Constant usage converted customs and privileges into rights; and when the Tudors came to the throne the titles of entrance and of succession in the House of Lords were very much the same as they are to-day. All grants originating in the Crown, a writ of summons was sent

afresh to every peer at the commencement of every parliament, and on the death of a peer his successor presented a petition for the issue of a writ to himself, until which application he was not summoned. The question arose in 1897 whether a member of the House of Commons upon whom an earldom had descended could continue to sit in the Lower House by abstaining to apply for a writ. Although it appeared that there was no obligation to make such an application, the House decided that a person entitled to claim a peerage was disabled from remaining one of its members. This decision however does not prevent the reconsideration of the question if it should again be raised.

Scottish Peerage. The Act of Union with Scotland, passed in 1707, disabled the Crown from creating any more peers of England or of Scotland. Thenceforward all peerages were to be peerages of Great Britain, and in the United House of Lords all peers of England would be entitled to sit, and sixteen peers of Scotland to be elected by the full body of Scotch peers at the commencement of each parliament. It is practically recognised that the prerogative of the Crown to create new constituencies to send members to the House of Commons ceased when the Act of Union made the representation in that House of England and of Scotland a matter of parliamentary sanction; and it may be argued that the Act was not without effect on the position of the peers. The prerogative of creating fresh peerages was carefully preserved, but if any doubt lingered as to the rights of peers to be summoned at the commencement of any parliament, that doubt must be considered to have been finally dispelled by the Act of Union. The Act requires the issue of a writ for the election of Scotch representative peers, and this would seem to involve a parliamentary duty to issue writs of summons to peers of England and of Great Britain. Viewed in this light the issue of a writ of summons becomes a purely ministerial proceeding, as to which there is no discretion, although no legal authority is entitled to enforce its exercise.

Irish Peerage. The Act of Union with Ireland followed, with some modifications, the method of the Scotch Act. The peers of Ireland were entitled to elect twenty-eight representatives, but each elected peer was elected for life and not for a parliament. The power to create new Irish peerages was not destroyed, but was limited, so that new peerages should only be called into existence as older peerages became extinct, and that in the proportion of one to three, until the number fell to one hundred. Any Irish peer, not being a representative peer nor joining in the election of representatives, is qualified to sit in the House of Commons for any constituency in Great Britain, a privilege entirely debarred to Scotch peers. The Act of Union further provided for a representation of the Irish archbishops and bishops in the House of Lords, but this was abolished when the Church of Ireland was disestablished.

Representative Peers. As the Irish representative peers are elected for life, and the whole body is convoked for the election of a vacancy when it occurs, it easily follows that the twenty-eight representative peers belong exclusively to the party of the majority in the Irish peerage. It is not quite so certain that the sixteen representative peers of Scotland elected at the commencement of each parliament should all be of the same political complexion, but in practice this too is secured. A suggestion has been from time to time made to alter the methods of election of these representative peers, so as to secure in some degree a representation of the different opinions that may be found in Scotland and in Ireland, but such attempts have so far been unsuccessful, and have indeed not excited much attention.

The House of Lords since 1832. The peerage thus described must be recognised as a body into which the possessors of great wealth, especially of wealth in land, easily found admission, and as up to 1832 a very large proportion of the seats in the House of Commons were under the control, if not the property of, the same class, it follows that up to that time the government of the country was practically

vested in an oligarchy of great inherited wealth, but, unlike other oligarchies, continually admitting the heads of more recently enriched families. It is true that the House of Lords was also recruited by successful lawyers attaining the office of Lord Chancellor or other high judicial positions and by naval and military commanders of distinction ("a peerage or Westminster Abbey" was the aspiration of Nelson); but these recruits were already sufficiently wealthy to belong to the same class or were enriched by grants of pensions to enable them to hold an analogous position. The struggle of 1832 was a struggle on the part of the other classes of the community working through such of the constituencies of the Commons as were free, and overawing not a few of the rest, to transfer the power of government to a wider representation of the people at large in the House of Commons. It has already been noted as now universally admitted, that the House of Lords must always defer to the will of the nation as expressed in the response to an appeal at a General Election. The strongest illustration of this deference is perhaps to be found in the circumstances of the disestablishment and disendowment of the Irish Church. This was a change which would naturally be regarded with extreme disfavour by the Lords, and when in 1867 a preparatory Bill was sent up from the Commons to prevent the creation of any more vested interests in respect of ecclesiastical preferment in Ireland, it was decisively rejected. But the election in the autumn of 1868 was fought on the issue of Irish Disestablishment, and when the complete Bill came up in 1869, the principle was accepted as decided by the constituencies, and the contest turned on details which admitted accommodation, and were in fact settled with comparatively little difficulty.

The House of Lords since 1832 has received additions from time to time much as before. Its numbers have grown alongside the wealth of the nation to such a degree as to excite speculation as to whether it would be possible to maintain indefinitely this continuous increase. It has checked,

modified, and delayed proposals of legislation sent up from the House of Commons, and on some minor matters not of wide and general interest, it has maintained an attitude of resistance; but in rejecting larger proposals, it has taken its stand on the necessity of consulting the nation whose voice is recognised as the ultimate power. The House of Lords in recent years has almost entirely ceased to originate legislation. Bills consolidating particular branches of the law, and an administrative measure or two of a noncontentious character may be introduced into the Lords; but even these experiments are of hazardous fortune, and Governments of all parties find themselves constrained to bring into the House of Commons first the measures on which they set store. The House of Lords remains however the barrier moderating and obstructing movement; and though discretion in the exercise of its powers may keep them theoretically unimpaired, it may not be amiss to inquire whether any change can be detected as in progress, or can be anticipated as probable if not inevitable.

Life Peerages. In the year 1856 the Crown was advised to bestow a peerage for life on Sir James Parke with the title of Baron Wensleydale. Peerages for life had frequently been created, although they had been perhaps exclusively bestowed upon women; but the House of Lords, while fully recognising the prerogative of the Crown to create life-peerages, passed a resolution declaring that life-peers were not entitled to sit and vote in the House of Lords. It could scarcely be expected that the members of an hereditary peerage would consent quietly to an exercise of the prerogative that had long since fallen into disuse, the employment of which threatened their legislative powers; and the attempt to introduce life-peerages in this manner was certainly unlucky. It must be noted, in passing, that the resolution of the Lords admits that there may be peers who are not legislators, nor like Scotch and Irish peers represented by brother legislators.

Law Lords. The attempt to create life-peers by pre-

rogative failed, but there has since been a minute addition of life-peers authorised by statute. The House of Lords was for a long time in fact, as it still remains in name, a Court of ultimate appeal in all causes in the United Kingdom not arising in the Ecclesiastical Courts. It constituted this Court of ultimate appeal for England up to 1707, for England and Scotland up to 1801, when it became the Court for the United Kingdom. The House at large was the Court, and down to the end of the last century lords learned and unlearned voted freely on decisions. Those who had not been trained as judges or ex-judges gradually withdrew from hearing and deciding appeals; but it was not till the year 1845 that the abstention of unlearned lords became recognised as a moral obligation. In an appeal on the validity of the conviction of Mr. O'Connell the Law Lords were divided by a majority of one against the Crown, and certain lay lords wished to support the Government and the conviction by their votes. But the Lord Chancellor (Lyndhurst) acting, it would seem, more under the influence of Sir Robert Peel than of his own motion, discountenanced their action, and they abstained from interference. From that time the House of Lords as an appellant Court confessedly consisted of the Law Lords only, and when in 1875 the judicial system was reorganised, part of the scheme was to set up a supreme Court of Appeal entirely detached from the House of Lords. It was urged that it was inexpedient that the position of a member of the Supreme Court should be limited to persons who were ready to sustain the burden of an hereditary peerage. On the other hand, there was a great jealousy of a change that would take away from the House of Lords the lustre and dignity conferred upon the body at large by the fact that the supreme Court of Appeal consisted of a few of its members. In 1876 a compromise was agreed upon which enabled life-peerages to be conferred on four Law Lords, and the Court of Appeal within the Lords was expressly confined to those qualified to be members of it. The Act as originally passed allowed these life-peers to sit and

vote as legislators only as long as they were Lords of Appeal; but it has since been amended so as to preserve their legislative functions after they had ceased to serve as Appeal Judges. Life-peerages have thus been introduced, though on a very limited scale, nor have suggestions been wanting for adding to them. Bishops are life-peers and there might be others neither legal nor clerical.

Non-attendance and remedies for it. The continuous growth of the House of Lords may be checked by the increase in life-peerages. Life-peers pass away, but an hereditary peerage may descend to a man who is quite uninterested in political action, and is rarely found sitting in the Legislature. The ordinary attendance of the Lords is never large, and its *quorum* is indeed limited to three. The absence of work to be done is to some extent an excuse for non-attendance, but non-attendance prevailed in the days when the Lords were a more active branch of the Legislature. Proxies were then allowed to be used by those who were present on behalf of the absent, and a peer could even be entrusted with a general proxy, not limited to a special occasion. Proxies could not indeed be counted in Committees on Bills, and the number of proxies which a peer might hold was latterly reduced to two; but in 1868 the Lords passed an order against calling for proxies, and it may be inferred that they will never again be employed. Peers are not now allowed to vote in debates which they have not heard, and in respect to matters of which they have had no specific notice; but the spectacle is now presented, at distant intervals, of a crowd of peers, ordinarily inattentive to their legislative duties, coming up to swell an already large majority. The political expediency of such demonstrations must be doubtful, and among possible changes in the working of the Upper House two may be named: the first, that of vesting the legislative functions of peers in a smaller number chosen by the main body; and the second, that of disabling from voting those who have not attended for a prolonged period until they recover the right by adequate attendance. The

former suggestion may be traced to the representation of Scotch and Irish peers. The latter is probably based upon some colonial precedents where the Upper House is nominated, and members lose their rights through non-attendance. A precedent for disabling peers from exercising their legislative functions, without however losing other privileges of peerage, was set in 1871, when it was enacted that on a peer becoming bankrupt he should lose his right to sit and vote, and no writ of summons should be issued to him whilst his bankruptcy lasted.

Other proposals of reform. Suggestions such as have been glanced at might gradually modify the composition of the House of Lords; but, unless the introduction of life-peers were continuously if cautiously extended, no material change would be effected. Proposals of a wider character point either to greater changes in the composition of the House, or to stricter limitations of its veto on legislative proposals. The first would transform the House into a combination of representation of the hereditary peerage, certain *ex officio* members, and members elected by elected local authorities of sufficient importance. The second, taking note of the admission that the Lords must defer to the verdict of a General Election on any specific issue, would make their rejection of a Bill valid only from one parliament or even from one session to the next, when it should become law over their dissent if presented again by the House of Commons in the same form. It may be said however of all proposals like these, that they require for their adoption a popular resolution in their favour which the Lords may be slow to provoke. The public judgment may long tolerate a machine which works without unnecessary friction, although it would not construct it in the same fashion if it had to be for the first time devised.

Impeachment. This form of trial under which the Lords were the judges and the House of Commons the accusers of persons, whether lords or commoners, charged with high crimes or misdemeanours affecting the realm played

an important part in the seventeenth and even in the eighteenth century; but though copied and even enforced in other constitutions it must be regarded as fallen into desuetude among ourselves. The procedure is uncertain and dilatory as was exemplified in the trial of Warren Hastings, and there prevails to-day a strong and probably growing distrust of the justice of a multitudinous tribunal.

Lord High Steward's Court. There is yet another class of cases in which the peers have sat as a court of law which cannot be dismissed as obsolete. This is where one of their body is accused of treason or felony or misprision of treason and claims his privilege to be tried before his fellow peers. If Parliament is sitting, his case according to past custom would be removed to the House of Lords, and a Lord High Steward appointed to preside on the occasion. If Parliament is not sitting, the Lord High Steward is similarly appointed and the peers are summoned to form his court. The verdict is by a majority, which however must contain not less than twelve.

CHAPTER IX

Course of Business in Parliament

The Ordinary Session of Parliament may now be regarded as fixed to begin early in February and to end in the middle of August. At the commencement of the century and down to 1832 it was customary to assemble Parliament a few weeks before Christmas, and the session was then closed about June 4 (the birthday of George III.). Suggestions have, from time to time, been made for a recurrence to this period, and a motion in favour of such a change was carried by Sir George Trevelyan in 1890; but whatever the inconveniences attaching to a session beginning in February and lasting through the summer to mid-August, the balance of considerations seems on the whole to support it, and the

motion in favour of a change has not been followed up. An examination of the machinery of our financial system will show that it practically determines the period of the session. Before however entering on a review of the ordinary course, it may be well to note the characteristics of extraordinary sessions. Of these the most important is the first session of a new parliament. A dissolution frequently interrupts the business of the year before it is completed, and it is necessary to call the new parliament together to complete the interrupted work. A dissolution may produce a change of Ministers, and in this case it is convenient to summon Parliament, if only to provide for the issue of writs to fill up vacancies caused by acceptance of office.

Choice of Speaker. In any case a Speaker must be chosen by the new House of Commons, though this of itself is not a sufficient reason for a session. It may now be taken as settled practice that a Speaker shall be re-elected who has proved himself competent for the post. It is understood that in some self-governing colonies a new choice for the Speakership is made at the commencement of every parliament; but in the United Kingdom the member chosen becomes at once outside party, and he is habitually re-elected. Speakers have happily been so chosen that no question of unfitness for re-election has been suggested for long years past. It is said that, at the commencement of the parliament of 1874, Mr. Disraeli had in his mind to set aside Mr. Brand, who had been chosen Speaker in the last parliament under the influence of Mr. Gladstone, and to support the election of another member; but he met with opposition within his own party and the idea was abandoned. The present Speaker, Mr. Gully, was first elected in 1895, shortly before the dissolution of that year, when Sir Matthew White-Ridley was nominated in opposition to him. This was the first contest for the Speakership since 1835, and as the majority was not large, and the approaching dissolution was expected to change the balance of parties in the House of Commons, it was asserted with some appearance of authority that the choice would not

be regarded as binding by the new House. In the event, there was an unparalleled overturn of parties, but if the intention to set aside Mr. Gully was ever seriously entertained, it was again abandoned. This experience has established more strongly than ever the principle that a member once Speaker should remain Speaker as long as he is fit for the office. It will be observed that expressions have been used implying that the Speaker is the choice of the Ministers of the Crown. This is indeed the fact, though Ministers naturally have regard in this as in all other questions to the feelings and opinions of their friends; and the mere acts of proposing and seconding the candidates are ostentatiously left to private members. The Speaker-elect is presented at the bar of the House of Lords for the approval of the Crown; but this is as pure a formality as the Royal Assent to a Bill that has passed both Houses.

Extraordinary Sessions. Besides the session at the commencement of a new parliament another kind of extraordinary session must be noticed. The House of Commons votes in the course of its regular annual sitting supplies to support the ordinary cost of government for twelve months, and if any new and unexpected cause of expenditure of a grave character arises, it is necessary to summon Parliament for fresh supplies. The breaking out of a war compels this action. It is the prerogative of the Crown to declare war, but war cannot be sustained without fresh grants of money, and Parliament is therefore assembled, and the House of Commons invited to vote additional supplies.[1] Another extraordinary session—something of a survival—is that held immediately on the demise of the Crown, when members meet and swear allegiance to the sovereign.

The King's Speech and the Address. We may now return to consider the course of a normal session. It is

[1] A short session of this character was necessitated by the South African War in the autumn of 1899; and a similar session was held in 1900, as the unexpected extension of the same war had involved greater expenditure than had been provided for.

opened with a speech from the Throne, under cover of which the Ministers of the Crown glance at foreign and colonial relations, briefly note any national events of transcendent importance, enumerate the chief proposals of legislation intended to be recommended by them, and invite the House of Commons to vote the supplies submitted as necessary for the services of the country. The Royal Speech is in fact a declaration of ministerial policy, and it becomes at once a subject of debate. An Address of reply is formally moved, which at one time thanked the sovereign *seriatim* for every sentence in the Speech, but since 1890 has been made a simple dutiful acknowledgment. This abbreviated Address admits however as wide a range of discussion as the fuller reply. It has been already pointed out that Ministers of the Crown, although defeated at an Election, formerly used to wait for an amendment to the Address before resigning, and that this happened again in 1892. The amendments now ordinarily moved do not look to such serious consequences. They are submitted as texts for the discussion of questions that might not otherwise come under debate, and as other opportunities have become fewer there has been a tendency on the part of private members to make more use of this first opening. The prolongation of debates on the Address is attended with some inconvenience, and whenever the course of business in the House of Commons is again seriously reviewed, this will require attention. The dominant fact to be borne in mind is that the financial year ends on March 31. It has been already explained that money voted for a particular year and unspent, lapses, and is not carried forward to the new year; also that before any money can be issued for public services, the supplies must be voted and money granted to meet them, and the whole embodied in a Bill passed by Parliament. It follows that much work must be done between the opening of the session and March 31.

Estimates. Votes on Account. As soon as the Address is agreed upon, the estimates for the coming year are

laid upon the table, and the House of Commons is asked to sanction one or two votes for the Army sufficient to meet military expenditure for two or three months, similar votes for the Navy, and a vote on account for the Civil Services sanctioning advances to the separate departments sufficient to enable them to carry on for about four months. All votes are passed in Committee of the whole House, where members have the privilege of speaking more than once on the same question, and before the Army or the Navy votes can thus be considered in Committee, general debates on the Army and Navy respectively take place in the House itself on motions that the Speaker do leave the chair; and it is not obvious why, in principle, there should not be a similar debate before a vote on account is sanctioned for the Civil Services. The foundation of the proceeding is the old maxim that a discussion of grievances precedes Supply, and this would seem to require a general debate before the Vote on Account; but in fact this general debate is postponed until the Civil Service votes come to be discussed and voted separately. It is perhaps a sufficient explanation of the apparent anomaly that there is quite enough work to do as it is, for indeed the statement of the financial business to be transacted before the 31st of March is not yet fully given.

Supplementary Estimates. This additional financial business is that of sanctioning supplementary estimates for the year drawing to a close. It has been already mentioned that if any grave cause of additional expenditure arose in the course of the year, such as that due to a war, Parliament would be called together to approve of it; but minor occasions of outlay continually arise not foreseen when the estimates were originally framed, and for such additions under the name "Supplementary Estimates" the sanction of Parliament is asked between February and March. A little reflection will show how the several branches of financial organisation and the sitting of Parliament hang together. Whatever be the end of the financial year, Parliament must meet before it is reached in order to complete the service

of the expiring year and to provide for the new, and again before Parliament meets all the Estimates for the several departments must be drawn up and revised; and it is in the interests of economy that the settlement of these Estimates should be as little distant as possible from the time to which they refer. If Estimates are drawn up long in advance, it is inevitable that wider margins must be allowed for possible contingencies. Once more, economy is secured by the passing of all these Estimates under one control before they are submitted to Parliament; and it is plain that that control must be that of the department which has to provide the money to meet the proposed expenditure. The outcome is that throughout the several departments, when they set to work after the autumnal holidays, there is a preparation of estimates which are sent on to the Treasury, so that with the 1st of January they may be in process of revision so as to be ready for the forthcoming session. The estimates for the Army and Navy are not examined in the same detail by the Treasury, but they too must be made ready, and must be accepted by the Chancellor of the Exchequer as the basis of his calculations and of his provision for the coming year.

No Vote moved except by a Minister. In the fashion thus described, the whole financial organisation of the country, so far at least as expenditure is concerned, is drawn by convergent lines under the scrutiny and control of the House of Commons; and in this connection it need only be added that no vote of money and no addition to any vote can be proposed except by Ministers of the Crown. This is under a Standing Order of the House of Commons which the House might of course alter or revoke, but it is rightly regarded as a most valuable safeguard against irregularities, and there is no danger of its being abrogated, although individual members often evade it by proposing a diminution in a vote, when they have argued that it is insufficient, and they really desire to augment it. The House of Commons, when seriously and deliberately bent upon it, can effectually produce increased expenditure; and Chancellors of the Exchequer

often complain that the House stimulates extravagance and is indifferent to economy, but the rule disabling private members from proposing votes or additions to votes is a security against casual irresponsible action which would be condemned by many too indolent to be always at hand to oppose it.

The Budget. It may here be noted that the Chancellor of the Exchequer generally opens his Budget soon after the commencement of the new financial year.[1] Early in April he reviews the income and expenditure of the year that has just run out, comparing the results with those of the preceding twelve months and also with the anticipations which were put forward in the last Budget. He takes the opportunity to draw attention to the course of commerce and industry in the same period, and he is naturally led to notice the state of the public debt as left at the end of the transactions of the year. He then passes to the Estimates of expenditure for the new year already laid before the House and the Estimates of revenue as they would accrue from existing taxes, and if the comparison of revenue and expenditure shows a surplus or a deficit, he has to propose means of distributing what is not wanted, or of raising what is required. At one time it was supposed to be his duty to underestimate income and to overestimate expenditure so as to be certain of a surplus after meeting his way; but whilst he is always bound to be cautious, any tendency to wilful error would now be condemned, and is not to be suspected.

Other Work of Parliament. The financial work that must be done between the opening of the session and the 1st of April has been stated, and some note has been taken of the Budget of the Chancellor of the Exchequer. Incidentally it has appeared that the Government has to obtain in the rest

[1] When however large additional taxation is imminent and increases of Customs and Excise duties are known to be inevitable, a Chancellor of the Exchequer may be forced to anticipate the ordinary period of his Budget so as to prevent the loss of revenue which would be experienced through the clearances of commodities out of bond under the lower duties. This occurred in March 1900.

of the session the sanction of the House of Commons to the several votes of the Army and the Navy and the Civil Service, and to pass through Parliament such Bills as, in its judgment, are demanded for the public welfare. Parliament has, however, other functions besides that of examining and approving the proposals of the Ministers of the Crown. It contains an organised Opposition whose first duty may be to criticise ministerial action, but which must have some more or less definite policy of its own. Its members may be trusted to use every opportunity of explaining their policy so as to attract the approval of the nation. And besides the organised Opposition there are private members with views and projects which have not yet received formal adoption by any party, and which their authors are all the more ready on that account to press upon public attention. The prime difficulties of the House of Commons are to estimate at their proper value these several branches of work, and to allocate the time of the session in due proportion to each. It is not unnatural that the Ministers of the Crown should continually seek more time for the work they recommend, all of which is undoubtedly important, and much inevitable; and it is also to be expected that the leaders of the Opposition, many of whom have been Ministers, would not very strenuously resist the demands of the Government for additional time.

The Function of the Private Member. It is however confessed that in generations before our own, private members have done work of incalculable benefit to the country in advocating reforms, in the extension of franchises, the liberation of commerce, the amendment of the criminal law, and the removal of religious disabilities, which would have made slower progress but for their energy; and it betrays some simplicity of mind to repeat, what is sometimes heard, that all far-reaching reforms are exhausted, and nothing now remains for the private member to undertake that could be put in comparison with the triumphs of the past. It is more probable that private members have for a time fallen below their predecessors than that the field for their action

is exhausted. It may be taken as certain that if Parliament, especially in the House of Commons, fulfilled its claim to be the Grand Inquest of the nation instead of an array of rival partisans, there would be a great revival in the variety and interest of subjects submitted for debate. It cannot be said indeed that there is now any lack of legislative projects. At the commencement of the session a crowd of members contend for the privilege of introducing Bills, and there are bitter complaints that the allocation of time for them is insufficient, and that what is given is squandered and wasted through the operation of ill-conceived rules.

Allocation of time of Parliament. As at present arranged the sittings of the House of Commons are limited to Monday, Tuesday, Wednesday, and Thursday, from 2.45 p.m. to 11 p.m., after which unopposed business may be taken till 11.30;[1] and Friday afternoon from noon till 5, and unopposed business till 5.30. Of these sittings Monday and Thursday, and Tuesday and Wednesday till 8.15, are appropriated by the Government, whilst the remainder of Tuesday and Wednesday, and the whole of Friday, are left for the use of private members, though their control of these days is often disturbed. It has been seen that a large mass of important work, mainly financial, must be executed before the 31st of March, or even before an earlier date if Easter falls at the end of March; and if the debate on the Address is prolonged, the remaining Government days may be too few for the discharge of this inevitable business, in which case the Government comes applying for private members' days in motions that are equivalent to commands. In April the days of private members may be left undisturbed, but they are soon again broken in upon.

Nights reserved for Supply. It has been seen that the detailed examination of the separate votes of Supply is

[1] A single opponent suffices, and sittings after 11 o'clock rarely last ten minutes. The eleven o'clock rule may be suspended, if notice is given beforehand.

generally wholly left till after the 1st of April. For many years this work, which admits of a review of every branch of the administrative action of Government in turn, was extremely ill done. In 1896 Mr. Balfour proposed a rule that twenty-two nights, which might be extended by motion to twenty-four, should be set apart for Supply, and Thursday is the night usually appropriated; and he left it largely to the discretion of the Opposition, or of groups of the Opposition, to say what particular votes should be taken. The rule was adopted, and has since been annually renewed, and in many ways it has worked extremely well. The nights for Supply and the votes to be taken are known beforehand, and the conduct of foreign or colonial affairs, of some, if not all, of the more important domestic departments, and Scotch and Irish administration, are reviewed in turns. There is a tendency requiring watchful attention to discuss votes without finally passing them, thus leaving an undue number of votes to the last hours of the allotted nights, when the rule requires that they shall be voted without debate. But no possible number of days would be sufficient for the examination of every item. The rule has not been made a Standing Order, because it has been thought well that it should be first fully tested by experience; and before it is thus adopted it may be supplemented by a provision ensuring the passage of votes as the nights go by; but it may be assumed that in some form or other the new rule will be permanent. Its effect however on the time of the Government has scarcely been fully appreciated. If twenty-four nights are absorbed by Supply, the nights, two a week, normally left to the Government for legislation and other work must fall below forty, and hence the pressure of business is soon felt to be severe. Accordingly, somewhere between Easter and Whitsuntide, the Government obtain the addition of Tuesday and Wednesday evenings to their days, and when Whitsuntide is over two or at most three Fridays are left for private members, after which Fridays also are appropriated by the Government.

Private Members' Bills. The time left for private

members is thus reduced to Tuesday and Wednesday evenings up to about the middle of the session, and Friday afternoons up to a fortnight after Whitsuntide. It cannot be said that this reduced allotment is economically used. Tuesdays and Wednesday evenings are reserved for motions made on subjects of public interest, and the subjects to be discussed are determined four weeks in advance by the chance of a ballot. The names of members competing for the privilege are drawn from an urn, and it may be that the subject first chosen is one of insignificant importance, and the member proposing it not a person to attract attention. It therefore not unfrequently happens that the attendance of members dwindles, so that the absence of a sufficient quorum terminates the sitting, if not before the first subject is ended, before a second is seriously entered upon. It is an obvious suggestion that the selection of subjects to be discussed should be determined not by chance, but by the choice of the House, subject to the provision that this choice should be exercised by minorities in turns. But private members have never been sufficiently organised to insist upon regulations for this purpose, and the ballot holds its own as giving a chance all round. The disposition of Fridays is at least as improvident. Fridays are given up to the Bills of private members; and at the commencement of the session the first place in every possible Friday in the session is secured, as the result of a ballot, by some member. The competition is indeed so great that after one Bill has been set down for Friday a second, a third, or a fourth may be added on the possible chance of its being reached. The first Bill in the majority of cases absorbs the sitting, and a division upon its second reading may be assumed as certain; but even if it successfully passes this ordeal it can scarcely go further if there is any real opposition to it. There is no opening for the subsequent stages until after Whitsuntide, when on the two or three Fridays already mentioned precedence is given to Bills in accordance with the progress they have made; and it is just possible that with the help of these Fridays, one, or

perhaps two, Bills may get through the House of Commons, and be sent to the Lords, too probably to come to an untimely end, though not for lack of time. It is perhaps a matter of wonder that a private member ever passes a Bill; and this indeed can only happen when the member has been very lucky at the ballot, and the Bill is such as to command an almost overwhelming measure of support.

Course of a Bill through the Commons. References have been repeatedly made to the successive stages of a Bill on the assumption that they are generally known, but it may here be well to give them in detail. In the House of Commons a member gives notice that he proposes to introduce a Bill on a particular subject, and at the appointed time he makes his motion. This may be discussed and opposed; but except in connection with Bills of great importance introduced by Ministers of the Crown the first motion (called "the first reading") passes with little or no debate and without a division. A day is then fixed for the second reading, before which the Bill is printed and circulated, and on which a debate on its principle is taken if it is opposed. If it passes this stage, it may be referred to a Select Committee, but this happens only when it is thought expedient that its provisions should be examined in detail, and evidence taken thereon if necessary, by a small number of members specially qualified to deal with them. The next stage after the Bill has been reported upon by a Select Committee or after the Second Reading, as the case may be, is a reference to a Committee of the whole House or to one of the two Grand Committees called respectively the Committees of Law and of Trade. These Committees consist of eighty members chosen so as to represent the House in miniature, to which fifteen other members are added in respect of each separate Bill; and it was intended when the Committees were first constituted that the Bills referred to them should be such as were not opposed in principle, though their provisions required careful and authoritative revision by a miniature House. It must be noted that in all Committees, whether engaged in

examining Bills or in other work, a member may speak repeatedly to the same question. After a Bill has passed through either a Grand Committee or a Committee of the whole House, it is reported and considered in detail with the Speaker in the Chair, if any amendment has been made in progress through Committee. If no amendment has been made there is no Report stage, and the Third Reading is the next taken, after passing which the Bill is carried to the Lords.

Procedure in the Lords. A Bill brought from the Lords proceeds at once to the second reading in the Commons, and a Bill brought from the Commons proceeds in the same way to the second reading in the Lords. A Bill originating in the Lords is presented by the lord who is sponsor for it; after which it proceeds to a second reading. Its subsequent progress was formerly exactly the same as the progress of a Bill in the House of Commons before the institution of Grand Committees; that is to say, with or without a reference to a Select Committee it passed through a Committee of the whole House, Report if an amendment had been made, and Third Reading. In the year 1888 however the Lords resolved upon introducing a change in their procedure, and they then had the intention of setting up several Standing Committees to which Bills should be referred for better examination than seemed possible in a Committee of the whole House. This scheme was never wholly carried out, and so far as it has been adopted it has been modified in practice. One Standing Committee has been set up consisting of about a hundred members chosen by the Lord Chairman of Committees and eight other Lords associated with him to form a Committee of Selection. To the Standing Committee thus appointed every Bill is referred after having passed through a Committee of the whole House unless the House shall otherwise order, and it is perhaps noteworthy that the quorum of this Standing Committee is fixed at seven, the quorum of the House itself, as will be remembered, being no more than three. After consideration

by the Standing Committee the Bill passes to the Report stage if amended, and if unamended goes directly to the third reading.

Suspension of this Procedure. All the formalities of procedure in reference to Bills are within the control of the House through which the Bill is passing. Each House has exercised its discretion in varying them, and is doubtless competent to change them altogether. No radical alteration is indeed to be apprehended, but action is sometimes taken which must be noted. The House of Lords, recognising the limitation of its functions in respect of Appropriation Bills, ordinarily suspends all its Standing Orders after such a Bill has been read a second time, and passes the Bill through all its stages immediately. In the House of Commons in 1883, after a series of dynamite outrages, a Bill intended to protect the community against their repetition was passed through all its stages at the same sitting, after some demur as to the haste of the proceeding, but without any division upon it. There may appear to be very little difference between passing a Bill through all its stages one after another, and abolishing several stages for that turn; but the sacred character of the steps in procedure is attested by the form in which they are set aside. Each House remains omnipotent, and must be trusted not to abuse its power.

Obstruction. The ordinary formalities of legislative procedure in Parliament manifestly afford large opportunities of debate; and it cannot be surprising if in times of excitement, when measures in progress are strenuously opposed, the opportunities are in danger of being abused. Such an abuse is recognised by the name of obstruction; and it is almost always denounced, sometimes without reason, sometimes with very good reason, when resistance to the course of legislation is obstinate. It may be hazardous to attempt to define obstruction. When a project of legislation is brought forward with little or no forewarning, embodying perhaps a novel policy and containing provisions which have not undergone public discussion, and in reference to which the mind of the

nation may be unenlightened and its judgment unknown, a repetition of hostile argument in debate after debate may be a public duty such as it is the especial function of an Opposition to discharge. But such debates easily pass beyond defensible limits especially in Committee, when the same member may make speech after speech. When the conduct of Opposition degenerates into a resolution to use all the forms and privileges of debate to prevent a Bill passing, not because it is new and strange and not understood or not approved by the nation, but simply because it is disliked by those who are opposing it, the offence of obstruction is developed.

Closure. Up to 1882 there was no parliamentary rule under which debates could be compelled to come to a conclusion. In that year the principle of "Closure" was adopted in the House of Commons, and the rule now stands that if a question is under debate, and a member moves that it be put to a division, the Speaker, or in Committee the Chairman, can at his discretion put, or refuse to put, the motion; and if he puts it, and it is carried with one hundred persons told as voting for it, the question in debate is forthwith put and settled. The immediate obstacle is thus overcome; but the rule goes further. When a Bill is under discussion in Committee or on Report, a motion can be made that certain words or that a clause stand part of the Bill, which motion, if accepted by the Speaker or Chairman and carried, may have the effect of overcoming several obstacles at once. Even this however is only slightly effectual when opposition is minute and prolonged, which may happen with or without justification. On three or four occasions recourse has been had to another and still more drastic method of procedure. In the case of the Crimes Act (Ireland) in 1887 the opposition was bitter and stubborn; and a motion was made and carried that, if the Committee stage was not ended by a certain night, the remaining clauses should then be put from the chair without debate; and a similar procedure was employed at the close of the Report stage. These precedents were followed in the next parliament in 1893, when the Home

Rule Bill was, to use the phrase of the day, "guillotined," as was also the Evicted Tenants (Ireland) Bill in the year 1894. The procedure has thus been employed by both great political parties, but it is not the less deplorable. If habitually used it would mark the ruin of parliamentary methods; but it may be said with some truth that it has been an odious necessity provoked by reiterated discussions from which the parliamentary spirit had already vanished. Those who desire to see it fall into disuse must be zealous to co-operate in restraining the abuse of opposition on the one side and the passion of impatience on the other. At times when great constitutional questions are in agitation it may be difficult to restrain the licence of irresponsible followers; but those who have seen the violent expedients to which excesses lead should be on the watch to check the unparliamentary spirit on its first manifestation.

Questions. Another function of Parliament in relation to public affairs must be noted.[1] At the commencement of public business, questions may be addressed to Ministers seeking information with respect to the administration of their several departments. Argumentative questions are not permitted, nor is any discussion allowed to follow, but a Minister may be asked any question of fact touching his action or inaction, and such questions attest a constant vigilance which may check administrative error. They can be asked in both Houses, and in the Lords a question may be supported by a speech and followed by debate; but in the Lords questions are rare, whilst in the Commons they are habitually numerous, and have been known to exceed a hundred. This species of control is often exercised in respect of very trifling matters, where a member unambitious of publicity could obtain his information by private inquiry, but the liberty of questioning a Minister is of great value as a safeguard against possible error.

Adjournment. It has been said that discussion cannot

[1] The work of Parliament in respect of private bills will be reviewed in a subsequent chapter

follow a question; but in former years a member dissatisfied with the answer he received was at liberty to move the adjournment of the House, and upon this motion a discussion could ensue. This privilege was highly valued, and Mr. Bright is known to have said when it was in force that it should never be given up; but it is manifestly capable of being easily abused, and in 1882 a new rule was adopted regulating it, which rule however has itself been often abused. Under it a member can, when questions are over, ask the leave of the House to move its adjournment for the purpose of discussing a particular specified question of "urgent public importance"; and if the House does not unanimously allow the motion, it can still be made, if forty members rise in their places to support the application. This species of interpellation formerly set aside the appointed business of the day as long as it lasted, but under a recent alteration, although the leave to bring on the motion must be obtained after questions are over in the afternoon, the debate is not allowed to begin until the resumption of business at nine o'clock. The power of starting a novel discussion is thus considerably hampered, but it is also checked by a device of a very irregular character. If it is suspected that adjournment will be asked for in relation to a particular question, some member, who does not want it discussed at all, gives notice in anticipation that he will bring it on for discussion on a future day, and by virtue of such registered notice prevents its being brought on at once.

Petitions. Some surprise may be felt that nothing has as yet been said of the ancient right of the people to petition Parliament. In former generations this was of great service, and its exercise occupied a considerable position in parliamentary business. Strict regulations were drawn up which are still maintained touching the form of drafting petitions; but in substance it was left free to any member to present any petition setting forth in becoming terms any public grievance and praying for some distinct remedy. This privilege remains intact, and it is still possible for a member presenting a petition to ask that it be read by the clerk at

the table; but this is very rarely done, and if an attempt were made to use this power at all indiscriminately, it would not improbably be taken away. Formerly a member could at once draw attention to a petition thus presented and initiate a discussion upon it, and this is still within the practice of the House of Lords; but the absorption of parliamentary time to which reference has been already made has rendered it impossible in the Commons. The practice of petitioning has indeed become somewhat mechanical in the Lower House. The member presenting his petition writes his name across the top, gives an attendant a filled-up form naming the petitioners, and the prayer, and drops the petition silently into one of the bags hanging at the table for the purpose. A Committee of Petitions publishes every week a statement of petitions received, of the names of the members presenting them, and the numbers of signatures attached, and reprints in an appendix to the statement such petitions as appear to be typical or otherwise of special importance. From time to time, when some particular question stirs the public mind, petitions from every part of the country are poured in through members, such petitions being often stimulated by the urgency of a central association pressing its friends everywhere to unite in petitioning, and the number and weight of petitions so presented furnish arguments in subsequent debates. The development of public meetings, of newspapers, and of other vehicles for the manifestation of opinion has however greatly diminished the importance of petitions, which may be expected to continue to decline.

Summary and conclusion. It may now be possible to conceive the action of Parliament, and more especially of the House of Commons, from day to day. Throughout the session questions are constantly addressed to Ministers respecting their administrative acts, and the Address in answer to the royal speech at the commencement gives an opportunity of formulating suggestions of policy. On a certain number of Tuesdays and Wednesdays the opinion of the House may be taken on motions or subjects of public interest; and on a

larger number of consecutive Fridays Bills may be submitted; though the choice of subjects of motions and of Bills is largely a matter of chance. The rest of the session is occupied by Government work such as the consideration of votes in Supply, the proposals of the Budget, and projects of legislation, and there is a constant tendency on the part of Ministers to ask for and obtain additional time for their own work at the expense of private members. The Government, it must be remembered, is in office because it is supported by a majority of the House, and there is a presumption in favour of its getting what it wants. But it must be remembered also that every parliament comes to a certain end, that many members have hopes and plans for re-election, and that if the Government of the day does not feel sure of retaining its power through and after a General Election, it looks to the possibility of being brought back again into office at some later period. All the political forces inside and outside Parliament thus tend to converge to maintain it as a national resultant, *i. e.* as the living and moving expression of the national will; but its claim to high respect which this description involves is vitiated by the strict organisation of parties, which makes Parliament itself for the time being an engine for effecting the purposes of party. The questioning of Ministers, the submission of motions for discussion, the interpellations justified as of "urgent public importance," the detailed supervision of the action of every department, the proposals of new laws removing old defects or providing for fresh needs—all combine to make up the presentment of a nation at work upon itself, moving and growing from phase to phase in the course of a natural development.

CHAPTER X

Private Bill Legislation

Former subjects of private legislation. The work of Parliament so far noticed has been entirely of general public interest; but a sphere of its action remains which is of great importance, though its range has been frequently narrowed. Application is made to Parliament by some private person or by a group of persons to obtain some privileges which it is alleged should be given in the public interest, or for relief from injustice in circumstances with which the Courts of Law are not competent to deal. Thus prior to 1857 a divorce *a vinculo matrimonii* could be obtained by persons domiciled in England only by an Act of Parliament; and domiciled Irishmen must still seek it in this way. Foreigners were generally naturalised by Act of Parliament before the Act of 1870 laid down the conditions under which certificates of naturalisation can be obtained from the Secretary of State. Persons interested as tenants for life or otherwise in family estates often sought leasing and selling powers from Parliament until the practice of conveyancing was so improved that such powers were commonly found in settlements, and still later under General Acts the Chancery division of the High Court was empowered to sanction the largest dealing with settled estates. All these are examples of powers that have been wholly or partially relinquished by Parliament. There remains a very large class of cases in which local authorities seek to obtain powers to expropriate land for purposes of public improvement or the development of some public enterprise; or groups of persons combining together in some undertaking such as the construction of a railway, canal, docks, or harbours, ask for like powers of expropriation on the ground that it is in the public interest that they should be granted.

Provisional Orders. The cases in which public bodies

seek for powers which apply to such things as street improvements, municipal or public buildings, gas or water works, etc., are now generally dealt with by Provisional Orders. The public body makes its application in the first place to the appropriate department of the Government (Home Office, Board of Trade, Local Government Board, etc.), which sends down an inspector to the locality to hold a public inquiry for and against the application, and to report thereon. If the result is favourable, a Provisional Order is drawn up giving the powers asked for, subject to such limitations and conditions as the public department is qualified by its practice to insert; and the Provisional Order singly or in conjunction with other similar orders is submitted by the department to Parliament in the next session, in the shape of a Bill which commonly passes through all its stages without any opposition, though it may be opposed like the other Bills to which reference must now be made.

Railway Bills, etc. These are the applications made by persons combining together to construct railways, etc. Such persons are required to deposit plans of their undertakings and Bills embodying the powers they seek, and to serve notices on all persons interested at such times and in such a manner as the Standing Orders of the two Houses prescribe; so that, when the session opens, every preparation has been made for hearing in each case the application and the opposition, and determining on its merits. These Bills and the Bills embodying Provisional Orders are introduced and read a second time like public Bills, but they are dealt with at the commencement of sittings before questions are entered upon, and as a rule they are read a second time without opposition. Occasionally however the principle of a Bill is discussed by the House itself on the second reading, the discussion being justified on the ground either of the novelty or of the magnitude of the proposals contained in the Bill.

Committee stage of private Bills. In any case the issues involved in private Bills are such as require examination in detail by a special tribunal, and for this purpose such

Bills, if opposed, are, in the House of Commons, referred to committees of four persons, two from each side of the House, and one of the four is nominated as chairman with a casting vote. They are all required to declare that they have no interest in the subject-matter of the Bill, and the four are selected by a standing committee called the Committee of Selection and composed of a limited number of members in whose experience and character the House has the highest confidence. Before this tribunal of four the applicants and the opponents are heard, witnesses are called, counsel are engaged, and the investigation proceeds with something approaching the strictness of a court of law. The report of the committee if adverse (when it is declared that the preamble is not proved) is final; and is commonly so when favourable, though in this case attempts are sometimes made at the next stage in the House itself to upset the decision of the responsible committee; attempts which are much discouraged by the House. The procedure in the House of Lords is practically the same as in the House of Commons, except that five lords constitute the committee, and that its members are got together by the Chairman of Committees instead of being nominated by a Committee of Selection There are however variations in the practice of the House of Commons. An important class of Bills consists of those promoted by municipalities and other local authorities seeking larger powers of police and sanitary control; and it was found that, when such Bills were submitted to committees of four, great variations of decision followed. It was determined in 1882 to refer all such Bills to a special committee called the Police and Sanitary Committee in which continuity of service might secure continuity of procedure, and this Committee has ever since (except in 1883) been appointed and re-appointed by motion from the House itself. Again, it sometimes happens that applications for private Bills involve questions of public interest that cannot be adequately protected by the presence of the limited class of persons whose rights are so interfered with by the Bill as to give them a title to

appear against it; and such Bills have been referred by the House to what is called a hybrid Committee with instructions to receive evidence and allow opposition from any quarter. A hybrid Committee consists of an even number of persons chosen in the ordinary course by the Committee of Selection, and an uneven number added by the House, one of whom, being entirely disinterested, is chosen to be chairman, while the others are equally divided as promoters and opponents of the Bill. All the proceedings so far spoken of are conducted separately before the two Houses, and it sometimes happens that the opposition which has failed in one House is successful in the second. Cases however occur from time to time, in which a hearing before a joint-committee of the two Houses is substituted for hearings before successive committees. These cases usually involve some very large questions of almost national importance, and the joint-committee is selected with extreme care, so that its decision, though practically final, is as authoritative as the repeated decision of the two committees; but saving this reference to a joint-committee the procedure in respect of second and third readings is conducted separately before each House as in ordinary cases.

Light Railways Act. It will be seen that the necessity of applying to Parliament for Private Acts generally arises from the desire to expropriate land which can in no other way be satisfied. Whether the land be wanted by a public body for purely public purposes, or by an association of men engaged in an enterprise promising private advantage as well as public utility, the principle has been usually held sacred, that no one shall be obliged to sell his land except under the authority of an Act of Parliament. It was indeed set aside in 1883–5 in relation to Ireland, where the Privy Council was allowed by Parliament to authorise the taking of lands for labourers' cottages and for light railways, and a departure from it seems to have been quietly sanctioned in a Scotch local Act; but it was not in any degree overruled in England till 1894, when, after a heated controversy, a compromise was agreed upon in the local Government Act giving an

order of the local Government Board the force of an Act of Parliament for the taking of land for allotments. This Act of 1894 was promoted by a Liberal Government; but in 1896 a Conservative Administration bettered the precedent against which its leading members contended two years before. In that year the Light Railways Act was passed, under which a small Commission was appointed for the local examination of proposed schemes for subsidiary railways, and if the Commission reported favourably to the Board of Trade, that department, after giving opportunities to objectors to appear again before it, could sanction the scheme conferring all necessary powers for its execution without having recourse to Parliament.

Experiments in devolution. The experiment of the Light Railways Act appears to have worked satisfactorily, but it has not yet been extended in other directions. The hindrances to small local improvements and to the development of undertakings of public interest involved in the necessity of resorting to Parliament have long been felt. The process is difficult and uncertain, subject to all the chances of parliamentary sessions, and is withal very expensive. It would probably have long since been set aside, had it not been supplemented by the cheaper and easier method of provisional orders.

Still the complaints have not been appeased, especially from Scotland, where there has appeared to be a strong objection to the necessity of bringing applications and all the evidence in their support up to London. Many plans have been drawn up to meet these complaints, and in the session of 1899 an Act was passed providing local machinery for dealing with some Scottish Bills. The machinery was changed and again changed during the passing of the Bill; and in the end, although a local tribunal was established, there was added a provision for re-hearing cases before a joint-committee of Parliament, if objection was carried so far; and we must wait for some experience of the working of the Act before it can be said that it in any way fulfils the motives for passing it. Parliament may be led to relinquish

the consideration of Bills involving the expropriation of land, as it has relinquished the consideration of other Bills, but at present it jealously guards this privilege, and plausibly objects to the appointment of a permanent tribunal to execute the work on the ground that its action would be stiff and legal, and wanting in that flexibility which enables parliamentary committees to shape their decision in accordance with the changing circumstances of the time.

CHAPTER XI

Parliamentary Commissions

Functions of Commissions. In the preceding chapter mention was made of the creation by Act of Parliament of a Commission charged with the duty of examining applications for making light railways. Upon this Commission is devolved what would otherwise be the direct work of Parliament, and if it approves of any scheme laid before it, its approval, subject to the sanction of the Board of Trade, has all the authority of an Act of Parliament. This is an example of a large class of Parliamentary Commissions, varying very much among themselves, but all possessing the characteristic that they are intended to be in some degree independent of direct parliamentary influence and direct parliamentary control. Their functions are sometimes executive, sometimes almost judicial, and sometimes have a mixed character combining several elements.

The Ecclesiastical Commission. A conspicuous example of a purely executive Commission is found in the Ecclesiastical Commission. This was appointed in 1836 for the purpose of relieving the bishops and cathedral corporations of the management of their estates, paying them instead fixed annual stipends and appropriating the surplus revenue it received in the endowment of new sees designated by Parliament, in the subdivision of large populous parishes, in the

provision of funds to support the clergy of the new districts cut off, and in augmenting the stipends of those livings in public patronage where the population was considerable and the existing endowment fell below a certain moderate standard. The character of the work to be done by this Commission was defined by Parliament, and from time to time additions have been made to its labours; but the execution of its work was largely left to its own discretion, and it is so far independent of Parliament that the expenses are a charge on the revenue it administers, and do not come as a vote under the annual survey of the House of Commons. Its action might at any time be overhauled by Parliament which called it into being and could put an end to its existence. But as no Minister sanctions its acts in detail, so no Minister is directly responsible in Parliament for them.

The Charity Commission. The Ecclesiastical Commission is permanent in character. Others have been appointed for a limited term of years to fulfil the intention of Parliament in matters which could not conveniently be entrusted to a department of the Civil Service. University Commissions have thus been charged with the partial reorganisation of the Universities and their Colleges, and in the fulfilment of these duties they have had to draw up new College or University statutes; but provision has been made that such statutes shall under certain conditions be laid before Parliament, where they may be annulled. This limited form of reserved control found more extended use in connection with the Charity Commission which, along with the Endowed Schools Commission, is now incorporated in the Board of Education. The Charity Commission, like the Ecclesiastical Commission, relieved Charity trustees of the management of their endowments, though only when these trustees so desired, and it had other functions of visitation and inspection and, subject to many limitations, of remodelling charitable trusts. The work of the Endowed Schools Commission was practically confined to the construction of new schemes for the management of endowed schools.

Commissions absorbed in Departments. It must be admitted that though Parliament from time to time creates Commissions intended to be in some measure independent of itself, it is easily moved to interference by a certain jealousy of the independence of bodies thus created. The acts of such a Commission affect the interest or excite the feelings of individuals whose complaints find vent through the remonstrances of their representatives in the House of Commons. The conditional independence is resented, and then abridged, and by and by the Commission is absorbed in the ordinary administration. The carrying out of the Poor Law reform was handed over to a Commission which, it was hoped, might have some independence, but in the nature of things this could not be. The work of the Commission was permanent; its cost was from the first a parliamentary charge, and it soon became a department represented by a responsible Minister in Parliament.

Railway and Canal Commission. Some elements of a judicial character will have been observed in the functions of the Charity Commission and allied Commissions. They are found in greater prominence, though mixed with administrative duties, in the work of the Railway and Canal Commission established in 1873. The primary purpose of this Commission was to secure to traders and the public those facilities which the legislature had designed should be given by Railway and Canal Companies, especially the former, but which through want of adequate expression, effective legislative provision, or the general complexity of the subject-matter, the Courts of Law were unable or ill-fitted to enforce. The securing of a through rate for goods, the prevention of unjust discrimination, the removal of impediments impairing or preventing the connection of services, the adjustment of working arrangements between railways themselves, are examples of the functions entrusted to this Commission; and though the direct operation of the Commission has apparently been small, and complaints have been raised of the inadequacy of its service, it is believed that it

has been an efficient check upon neglect or abuse of powers that otherwise would have been suffered; and it may confidently be anticipated that the scope of its duties will be enlarged rather than diminished. Most of its work takes the form of trials publicly conducted between parties with witnesses and counsel, and its decisions are given as legal judgments with a reasoned consideration of the facts and arguments submitted. Its expenses are charged upon annual votes, but any interference by Parliament is rather by way of support than of restriction.

Election Commissions. There remain other Parliamentary Commissions created for purpose of investigation, strictly judicial in their character and attributes. It has been already noticed that the validity of returns of members to the House of Commons was at first determined by the House itself voting as a multitudinous court, but was subsequently delegated to small committees which were in fact Courts of Law giving final judgments. It was however difficult for these committees to make exhaustive examinations of electoral contests, and an Act was passed providing that where a committee reported that there was reason to believe that corrupt practices had generally prevailed at a particular election, a commission of qualified persons should immediately issue charged with full power of investigating the conduct of elections in the particular constituency, and armed for that purpose with authority to give complete immunity from prosecution of any witness incriminating himself in the frank confession of truth. These inquisitorial powers were often effective in revealing a state of corruption which the House of Commons punished by a temporary suspension of electoral privileges, and in more than one instance Parliament went further and disfranchised the borough whose electoral corruption had been exposed.[1]

[1] The principle of this legislation was followed in Canada in 1873 by the appointment of a Special Commission, headed by a Judge of the High Court, for inquiry into alleged corrupt transactions involving the Prime Minister of the Dominion in connection with the recent General Election.

PART II

THE EXECUTIVE

CHAPTER I

The Crown: Privy Council: Cabinet

Succession determined by Parliament. Lords and Commons were originally called together by the will of the King, as they are still in form summoned to Parliament by writs from the Crown. The Great Council of the nation, as it was sometimes called, was so much the creature of the monarch that it dissolved *ipso facto* on his death. His right of descent was the predominant fact, in subordination to which all powers and authorities existed. There might be a question which of two competitors had the better claim to succeed; but there could be no dispute as to the quantity of authority that devolved on the person best entitled. In the two instances in which kings were deposed, an undiminished kingship passed to their successors. The Wars of the Roses were closed by the accession of Henry VII., who had in himself no title to the throne; but whether he ruled by his relation to his mother or to his wife, the persistency of the old principles of descent was strongly illustrated under his successors. Henry VIII. was authorised by Act of Parliament to dispose of the Crown by his will, and he exercised his power with perfect formality; but the will was in fact set aside by the succession of his children and of James I. according to the recognised order of descent. The tenacity of the right of descent suffered the rudest check

under Charles I.; but it reappeared under the Restoration with every mark of recognition; and it was not until the Revolution of 1688 and the Act of Settlement that the parliamentary disposition of the Crown was fully and finally established. The abortive design of setting it aside on the death of Anne served in fact to prove the strength of the new principle; and on the only occasion which has since arisen, involving in any way an examination of rights of succession, the authority of Parliament was further confirmed. When George III. became incapacitated by illness for the exercise of the functions of royalty, Mr. Fox was betrayed into arguing that the Regency devolved as a right on the Prince of Wales; but no one now contests the position successfully taken by Mr. Pitt that it was a matter to be settled by Parliament. The succession to the Crown itself is indeed a matter of parliamentary arrangement. It is vested in the descendants of the Electress Sophia, subject to the limitation that the successor is a Protestant.

Ministerial Responsibility. When Parliament, which must here be understood to mean the two Houses, undertook to regulate the descent of the Crown, the position of the Sovereign in the Constitution underwent a natural change. Something like a complete inversion has in fact been accomplished. The will of the Crown is now the will of the Minister, and the Minister is a person possessing the confidence of the House of Commons which represents the will of the nation. If on rare occasions of transcendent importance the Crown sets aside the will of the Minister, this step is defensible only on the assumption that the Minister no longer represents the national will, and it cannot be taken unless another Minister is found ready to accept the responsibility of a different advice. It does not follow that the personal influence of the sovereign is entirely lost in the working of the organisation of the State. In matters of appointment not perhaps of first-rate importance, personal preferences may prevail, though the allowance of such preference must depend

on the readiness of the Minister to consent to it; and so it could not extend to cases where the maintenance of a policy was involved in the choice. So far did Sir Robert Peel carry this view of ministerial right that he declined to accept office, when called upon to form an Administration in 1839, because his recommendation that a fresh appointment should be made of ladies in the higher posts of the Household was resisted. The difficulty in this case was perhaps a little overstrained on both sides, and it could scarcely recur to-day. It must indeed be always a matter of discretion how far the influence of the Sovereign in appointments may be allowed and how far it should be withstood. In the days of George III. ambassadors and bishops were often chosen through royal preference, and a Lord Chancellor was once so selected, with unhappy results. George IV. when Prince Regent constrained Lord Eldon to appoint a personal friend Master in Chancery. The memoirs of our own time speak of differences of opinion respecting appointments to the highest offices of the Church, which were however ultimately settled between Sovereign and Minister. Beyond the personal preferences involved in the appointments to certain offices, the influence of the Sovereign may be felt in the conduct of questions of larger policy. The experiences of long years and the intimacy that has been possible with personages of the highest authority abroad may bring elements of weight into consultation, especially in respect to foreign policy, with the result that the suggestion of the Sovereign may influence the judgment of the Minister, and the advice of the latter may receive a different shape and direction from that which it would otherwise have assumed. The influence of the Crown must not however be permitted to obscure in any degree the responsibility of the Minister who ultimately tenders the advice upon which action is taken. Mr. Disraeli was severely criticised in 1868 for having on a critical occasion apparently given the Crown the option of determining the precise course to be taken when he should himself have definitely recommended it.

He was completing, in respect of Scotland and Ireland, the parliamentary reform he had carried through in England and Wales, when Mr. Gladstone inflicted on him a severe defeat on the subject of the disestablishment and disendowment of the Irish Church. The balance of convenience, approaching to necessity, required that he should complete the task of parliamentary reform before resigning or submitting the new issue to the country; but in announcing to the House of Commons the course he intended to pursue, he was accused of sheltering himself behind the authority of his sovereign. The dispute viewed retrospectively may seem to turn on the use of words and phrases, but it illustrates clearly and sharply the indivisible responsibility of the Minister.

Growth of Privy Council. It is not intended to retrace the process of transition by which the Crown, from being almost autocratic, became the minister of its Ministers. From the earliest times there were great officers about and attendant upon the king to execute his will in their several offices; and as it would always be easy to call this lesser council together, it would not have been unnatural to claim for it an authority equal to that of the great council of Parliament. The danger may be traced to different periods of our history; but it was the happy fortune of England that it was met and resisted at the critical time when in other countries it was suffered to make head. In the days of Elizabeth the Queen in Council threatened to assume a law-making power, especially when Parliament was not sitting; but the peril that might have developed into a shipwreck of national liberties was happily dispelled under her successors. The council thus spoken of consisted of the chief officers in Church and State; but the dignity and style of member of the Privy Council was retained by the person who had filled a great office after he had retired from it, unless his name was struck off the list by an act of royal disfavour. In this way the Privy Council gradually grew to be what it is to-day. It consists of men who fill or have filled great

positions, or have otherwise been privileged to be called by the Crown to the status and dignity.[1] The Privy Council is never summoned as a body except on the demise of the Crown. It has no legislative authority. It may and does proclaim law on special occasions, though its proclamation cannot make anything legal or illegal which is not so through higher authority. Certain administrative acts are executed at its meetings, some under the common law, others under special provisions of Acts of Parliament. Such transactions amount to little more than solemn registrations of ministerial acts. They are executed at meetings where two or more members are present whose attendance is a matter of arrangement by the Ministry.

Rise of the Cabinet. Although the Privy Council as a whole is a mere registering body, there are committees of it charged with functions of the highest importance; and chief amongst them that most loosely-constituted committee, the Cabinet Council. The Council, as has been said, consisted originally of the chief Ministers attendant on the Crown. The Sovereign sat with these Ministers in deliberation, and the Sovereign still presides over those meetings for purposes of registration which have been mentioned. At the councils where there was deliberation, the attendance was naturally confined to the actual Ministers of the hour, and this constituted the inner working committee of the larger body. It was a step of great importance when the members of this committee began to assemble and deliberate without the presence of the Sovereign. Such conferences in an embryonic and secret form must have existed from the earliest times. They became more frequent after the Restoration, when the word Cabal was invented, and the meaning soon attached to it illustrated the light in which these meetings were regarded. In the reign of William III. another step of vital con-

[1] Until recently no one was made a Privy Councillor who had not filled some public office, but within the last ten years or so members have been added without any distinct qualification of this character.

sequence was taken. The Ministers thus deliberating whether with or without the presence of the Sovereign came to be confined to men sharing broadly the same political convictions, and the committee consequently developed into a party combination. Under Anne the absence of the Sovereign from being frequent became customary, and the ignorance of the English language of the first Georges precluding them from joining the consultation, what was customary became the rule. The character of the Cabinet Council has not since been altered, though its numbers have lately shown a strong tendency to increase.

Formation of a Cabinet. When a statesman is summoned by the Crown to form an administration, his first duty is to invite others to fill the great offices of State. He himself becomes and is called Prime Minister. He is so by virtue of the fact that he was the first to receive the summons of the Sovereign, and it was on his invitation that others have joined him; and although among his colleagues there may be men of the utmost weight in counsel and in public respect, he is still entitled to exercise, and commonly does exercise, an unquestioned superiority over all. It was indeed formerly asserted that the immediate Ministers of the Crown were all equal to one another, and that no one could claim to be first; but this declaration would now be a pedantic affectation. It would be something worse. In the recognition of the position of the First Minister the unity and solidarity of an administration are established and maintained. The Prime Minister commonly takes to himself the office of First Lord of the Treasury, to which are attached few departmental duties; but this is only a matter of convenience, and Lord Salisbury has twice preferred as Prime Minister to fill the office of Foreign Secretary.[1] The men whom the Prime

[1] Mr. Gladstone in 1880–81, following the example of Pitt and other precedents, joined the office of Chancellor of the Exchequer to that of First Lord of the Treasury. Lord Salisbury, whilst remaining Prime Minister, vacated in 1900 the office of Foreign Secretary and accepted the dignified sinecure post of Lord Privy Seal.

Minister associates with himself as Ministers have probably been engaged in active political co-operation with him before, though from time to time he may seek additional strength in fresh alliances. As a matter of convenience they must all be or become members of one of the Houses of Parliament, although the qualification is not legally necessary, and on very rare occasions a man has for a short interval been a Cabinet Minister without possessing a seat in either House. The names of those whom the Prime Minister is enabled to enlist are submitted to the Crown for approval with an intimation as to the composition of the Cabinet. Some officers, the Lord Chancellor, the Lord President of the Council, the Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, the First Lord of the Admiralty, are always included in the Cabinet; but there remain other offices the holders of which may or not be invited into this inner circle according to their personal qualifications. Some, or even many, of the persons thus called together need not have been Privy Councillors before. They are summoned to the Council as the result of their acceptance of their several functions.

Solidarity and secrecy of the Cabinet. Additions may be made to the Cabinet from time to time by the simple process of an invitation on the part of the Prime Minister to the new member to attend; and this body, the cardinal importance of which, in the working of the constitution, will hereafter appear, has no legal form or recognition, and might almost be described as a "fortuitous concourse." No record of its deliberations is maintained. No authoritative summary of its conclusions is published. Nothing is known of the different opinions that may be exchanged or the plans that may be discussed, until a definite result is reached in some act of policy recommended to the Crown or some proposal of legislation submitted to Parliament. This mode of secrecy in the working of the Cabinet maintains its unity as the central power of the Government for the time being. The memoirs of the past reveal discords in former

Cabinets, and the possibility of such discords can never wholly pass away; but as long as the Cabinet holds together, it is one. Each member is responsible for every other member, and the solidarity of the combination is complete. When, as sometimes happens, a Minister resigns because he differs from his colleagues, he commonly obtains, if Parliament is sitting, a release from the obligation of secrecy, so that he may explain in his place the reason of his retirement.

Functions of the Prime Minister. It has been suggested that in the larger Cabinets of later years unity and the easy dispatch of business have been secured by the existence of an inner Cabinet within the Cabinet, the decisions of which habitually command the deference of their colleagues; but besides this, consultations of the whole body are frequent, whenever the movement of public affairs requires them. The actual working of a Cabinet must vary with the different idiosyncrasies of Ministers, and especially of the Prime Minister. The memoirs of Sir Robert Peel sufficiently reveal the course of business in his last Ministry. He himself was First Lord of the Treasury; but he kept himself in constant touch with his chief associates, each of whom referred to him directly on any matter of great importance, whilst with one or two, pre-eminently with Sir James Graham, he was in the closest personal relations, revealing his innermost thoughts. Sir Robert thus knew what each department was doing, and his knowledge not unfrequently meant direction as well as approval. Foreign affairs, the affairs of India, Ireland, and Canada, and domestic affairs were referred to him in turn, whilst in addition to this constant supervision he took into his own hands, although not Chancellor of the Exchequer, the delivery of budgets, and the conduct of such a Bill as that regulating the note issues of the Bank of England. It is possible, and indeed certain, that with the increased multiplicity of affairs, the development of the functions of government, as well as the growth of the Empire, no Prime Minister could now maintain the same intimate association with the several departments of

State. But Mr. Gladstone's conduct of office during his first, if not throughout his second and later administrations, is believed to have followed the fashion of Sir Robert Peel, and it may be remembered that he took to himself the carriage of the several branches of his Irish legislation. Besides however the relations between the Prime Minister and his colleagues, the latter are kept acquainted among themselves with all that is critical in the action of each other. Purely departmental business need not and does not pass beyond the discretion of the individual Minister. But whenever any question of policy arises, and especially when any international or colonial episode of importance is in progress, memoranda are circulated among the Ministers, so that each is charged with a knowledge of what is going on, and has an opportunity of intimating an opinion upon it.

Cabinet Councils. It is in the prosecution of such matters that the members of the Cabinet are from time to time called together in Cabinet Councils to discuss the situation and to determine what shall be done. Besides these meetings there are others which may be regarded as of a more routine character, and which are necessarily held at particular periods. The legislation of the next Session is settled at Councils held at the end of the autumn. The leading Bill of the coming year may be marked out by circumstances which Ministers recognise rather than control; but the propriety of promoting other Bills is urged by separate Ministers and their claims compared. The scale of expenditure on the Army and Navy is, about the same time, settled in Cabinets in which the First Lord of the Admiralty, the War Secretary, and the Chancellor of the Exchequer may be supposed to take the leading parts. After Bills have in principle been determined upon, the examination of them in some detail is often referred to a Committee of the Cabinet, to which for this special purpose may be added some member of the Government not in the Cabinet, and after this revision they come back for final sanction. Later on, the budget proposals of the Chancellor of the Exchequer, at first perhaps

discussed with the Prime Minister and the Leader of the House of Commons and then circulated, are formally considered at a Cabinet Council. The Cabinet is thus like a Court of Directors under the leadership of a chairman, each with a department of his own, yet acquainted with the principal business transacted in the other departments, and all meeting together from time to time to receive reports, to deliberate, and to determine the course of business to be followed. Each brings to the performance of his work not only his own abilities, but the accumulated knowledge and suggestions of his permanent officers, whilst they all live in the common atmosphere of Parliament, and in this way are made hourly familiar with the conditions which must influence if they do not govern their action.

Judicial Committee of Privy Council. Another Committee of the Privy Council is that called the Judicial Committee, which is practically a Court of Appeal from the Ecclesiastical Courts in England and from the Courts in the colonies and dependencies of the Crown. The work of this Committee necessarily ranges over the most extended and dissimilar systems of law. Its composition may be said to be still in a state of transition. When the Judicature Act of 1875 was passed it was intended that the Committee and the House of Lords should be united into one Supreme Court of Appeal, and when this scheme was modified, as elsewhere noted, it was provided that the Lord Chancellor and the four Lords of Appeal, whose appointment was then arranged for, should serve as paid members of the Judicial Committee. Since then, three colonial Chief Justices have been added to the Committee and have occasionally served, whilst any Privy Councillors who have had judicial experience are qualified to sit, and in the ecclesiastical appeals it is required that at least three episcopal assessors shall attend the hearing. It may be added that all these appeals are made in point of form to the Sovereign, who refers them to the Committee for advice, and the answer given is the judgment of the majority in which dissentient opinion, if it existed, finds no expression.

CHAPTER II

Judiciary

Administrative Law. The rule or supremacy of law has been said to form one of the main characteristics of the English Constitution. The meaning of this phrase will be made clearer by a comparison. In France or Germany a state official cannot be made answerable in an ordinary court for acts done in his official capacity. Any complaint against him must be brought before special courts and dealt with by what is called "administrative law." The state fears that its necessary authority would be unduly weakened if its officers were liable to be called to account in the same manner as ordinary citizens. In England, on the other hand, any official from the Prime Minister down to the policeman may have the legality of his conduct questioned in the ordinary courts. In 1866, for example, proceedings were instituted against Governor Eyre by the ordinary criminal process on the charge of having proclaimed martial law and put British subjects to death without trial in Jamaica, and were stopped only by the action of the Grand Jury. This equality of the official and the ordinary citizen before the law provides one of the strongest securities for individual liberty.

Independence of Judges. This would not be the case if the Judges stood in fear either of the violence of the people or of the displeasure of the Government. Their present independence has been slowly achieved. In the great political trials of the seventeenth century, *e. g.* that of John Hampden and that of the seven Bishops, it may be seen in process of development. Half the Judges in one of these trials and nearly half in the other had the courage to decide against a Government which had the power to dismiss them. Lord Chief Justice Coke was actually dismissed by James I. for refusing to admit that a Judge ought to consult

the King before deciding a case where the King's interests were concerned. An important stage, therefore, in the history of English law is marked by the clause in the Act of Settlement of 1701 which had the effect of preventing the dismissal of a Judge except upon an address from both Houses of Parliament.

Law of Arrest; Habeas Corpus. The independence of the Judges would not avail to protect the liberty of the subject if the Government possessed unlimited powers of arbitrary arrest and imprisonment. Important safeguards upon the use of these powers have however been established, based upon principles of the Common Law which were subsequently strengthened and secured by statute. The first of these safeguards is that the warrant for the arrest of any person must state on the face of it sufficient cause for arrest. The early Stuarts attempted to evade this obligation, but it was insisted upon in the Petition of Right, and again reinforced in the Long Parliament. At a later period "general warrants" for the arrest of a person unnamed, though accused of definite offences, were declared illegal. The second safeguard is the right of any one under detention or of anyone in his behalf to apply to any superior Judge for a writ of Habeas Corpus directing a jailer to bring up a prisoner and show sufficient cause for his detention. This right was finally rendered effective by the Habeas Corpus Act of 1678.

Justices of the Peace; Juries; Police. Such safeguards, however useful, are formal. A more vital guarantee both of liberty and of order is to be found in the active share which the nation at large has always taken in the administration of justice. The early establishment of a uniform Common Law by the activity of the Judges sent from the King's Court to hold assizes throughout the realm was no doubt of immense importance in the development of the English constitution. But it was scarcely of lesser importance that the authority of the law has been more continuously presented in the persons of the Justices of the Peace drawn from the gentry of each neighbourhood, whose large share in local self-government

will be discussed in a later chapter. A responsible part was assigned to other classes by the institution of the Jury. Originally introduced by the Norman kings for other purposes, the jury gradually became an essential feature of criminal justice. The principle that a man cannot be convicted of a crime except by the unanimous verdict of twelve fellowmen is older than Parliament itself, and it has harmonised so well with the spirit of our local self-government that it has come to seem one of the most characteristic of English institutions. Another factor in securing English liberty has been the local control of the force which lies at the disposal of the law. Autocratic government requires a centralised police. The old English constable and his successor, the modern policeman, with the important exception of the metropolitan police, have always been under the direction of local justices or local corporations.

The Magistrates in Petty Sessions. At the base of the judicial hierarchy in relation to crime are the Justices of the Peace. When not justices or magistrates *ex officio* they are appointed for counties and for such boroughs as have separate Commissions of the Peace. They are appointed by the Lord Chancellor; but in the case of counties, usually though not necessarily, on the recommendation of the Lord Lieutenant. This official is generally some person of high standing in the county selected by the Crown practically for life, and his most important function is that of recommending fit persons to be magistrates. County magistrates not *ex officio* must possess a qualification of property. This is not required of Borough Magistrates. *Ex officio* justices or magistrates are, in counties, the chairmen of the County Councils and of District Councils; and in boroughs the Mayor, and ex-Mayor for one year after ceasing to be Mayor.

Any person seeing another committing a felony or one of the graver offences, or who, knowing such offence to have been committed, reasonably suspects another to have committed it, may and should arrest him on the spot; and policemen—constables or officers of the peace—have larger

powers of summary arrest. But where the offence is not so grave or the necessity of arrest not urgent, a summons or warrant should be obtained from the magistrate, the first requiring the alleged offender to appear before him, the second directing an officer to arrest and bring him. Whatever the preliminary step may be, the accused must be brought before two or more magistrates sitting in the court of the district of the offence, or Court of Petty Sessions; and the magistrates may in the case of defined light offences proceed to conviction, and sentence not exceeding six months' imprisonment, and must, in graver doubtful cases, unless satisfied there is no evidence to convict the prisoner, commit him for trial at Quarter Sessions or Assizes. In addition to the magistrates so described, there exist under statute in London and the largest boroughs stipendiary magistrates appointed by the Home Secretary at fixed salaries paid, in the metropolis, by the nation, elsewhere by the borough, each of whom is invested with the powers of two ordinary justices. Magistrates not *ex officio* may be struck off the Commission of the Peace by the Lord Chancellor, and the power is occasionally exercised.

Quarter Sessions. Next in rank above the magistrates sitting in Petty Sessions are the magistrates for the county, with one of them chosen by themselves presiding as chairman, assembled together in Quarter Sessions, and the Recorder of the Borough, where such exists, also sitting in Quarter Sessions. These can hear appeals against convictions in the inferior sessions, and they also try, with the assistance of a jury, such prisoners as have been committed for trial before them; and from the decisions of such courts appeals may be carried on points of law, though not on questions of fact, to the High Court of Justice.

Coroner's inquest. Another most ancient method of conducting inquiries into the gravest crimes is that of the Coroner's court. Coroners are, as a rule, county officers, serving for a district of a county, and until recently were elected by the freeholders of the district without regard to the value of their holdings; but they are now appointed by

the County Councils. Their tenure is for life; but they are removable by the Lord Chancellor for inability or misbehaviour, and a similar power is vested in any Court before which a coroner may be convicted of misconduct in his office.

The duty of a coroner in case of any violent or sudden death, or death in prison, within his district, is to summon a jury and to examine witnesses as to the cause of the death; and, if the result of the examination is a verdict by the jury charging any person or persons with the murder or manslaughter of the deceased, the coroner issues his writ for the arrest of the person so charged and he is brought up upon it at the next assizes. This process, though of great antiquity and of undoubted utility in the investigation of the causes of violent or sudden death, does not interfere with the procedure before magistrates in petty sessions already explained, and is indeed frequently held concurrently with it. Boroughs with quarter sessions also possess coroners by virtue of ancient charters. These officers are appointed by the borough council and their duties are similar to those of the county coroner.

The County Courts may be said to be at the base of the civil administration of justice, though their jurisdiction is strictly concurrent with that of the Judges of the High Court. They are of comparatively modern origin, having been created in 1846 to facilitate the recovery of small debts, to take the place of petty local courts which had mostly become quite inefficient. County courts are competent to try claims up to £50, and by consent to higher sums. They have also a jurisdiction of administration in Equity and in Bankruptcy up to £500. Judges of County Courts are appointed by the Lord Chancellor. They must be barristers of ten years' standing, and they are removable by him "for cause assigned," though it is believed that this power has not been exercised in more than one or two cases. These Judges ordinarily sit without jury, though either plaintiff or defendant can claim a jury (limited to five) in cases involving more than £5. Where the sum exceeds £20, or by leave of the Judge for

smaller sums, appeals may be carried on a point of law, to the High Court; but they are excessively rare in proportion to the cases tried. The most serious fact connected with these courts is the exercise by the Judges of their power of committal for contempt. It is most common for a debtor to be ordered to pay his debt by instalments; but the order, whether for immediate or deferred payment, is too often disobeyed, and Judges feel themselves compelled to commit the debtor to prison for contempt. The use of this power is obviously a matter of discretion, and the discretion may be abused; but as yet no attempt has been made to regulate the power, although attention has from time to time been directed to the subject.

The High Court of Justice as at present constituted is the result of a fusion of courts which took place in 1875. The divisions now existing, into King's Bench, Probate Divorce and Admiralty, and Chancery are only maintained in relation to the kind of business transacted in them. Each Judge may move from one to the other, and wherever he sits he applies the same law though the procedure may be different. Of these divisions the largest is the King's Bench or Common Law Division. At its head is the Lord Chief Justice, who is associated with fourteen other Judges. From this division the Judges are sent in pairs to try civil and criminal cases at the Assizes already referred to in each county; and such Assizes are held at least twice a year for civil and four times a year for criminal cases. The Judges of the division also try cases of an original character in London; and two of the Judges are from time to time associated together and form a divisional court which hears appeals from inferior courts and applications for a new trial, which may in fact be appeals from other Judges of the court acting singly.

The Probate, Divorce and Admiralty Division has succeeded to the jurisdiction of courts orginally ecclesiastical. The recognition of wills, the administration in simplest form of the estates of intestates, the allowance of divorce, and the settlement of claims originating in the high seas were matters

unknown to the Common Law, and were first noticed and cared for by the courts of bishops. The existing division of the High Court consists of a President and one other Judge.

The Chancery Division consists of the Lord Chancellor and six Judges. The jurisdiction of the Court of Chancery arose in early times to supplement the deficiencies and correct the injustice of a limited and rigid Common Law. The court gave relief from penalties the exaction of which would be unjust; set aside agreements made fraudulently or at variance with the true meaning of the parties; prevented the abuse of powers beyond the true limit of their intention; and enforced the performance of trusts which the Common Law by refusing to recognise left to the uncontrolled discretion of the trustee. Since 1875, when the courts were fused into one, every Judge of the High Court has the same powers and administers the same principles; but the simpler and directer issues are tried in the Common Law Division, while the more complicated and interwoven relations are investigated, adjudicated upon, and administered in the Chancery Division. It may be added that in the King's Bench the Judge tries the case with the assistance of a jury, whilst in the Chancery Division a jury is most rarely or never used.

Court of Appeal. Above the High Court thus constituted in its three divisions is found the Court of Appeal, of which the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, and President of the Probate Division are *ex officio* members, the other members being the five Lords Justices. This Appeal Court generally sits in two divisions with three Judges in each—the Master of the Rolls and the five Lords Justices being the members ordinarily acting—and from it cases may be carried to the House of Lords, or rather the Committee bearing that name, which has already been described as a final Court of Appeal.

Choice of Judges. The choice of members of the High Court other than the Lord Chief Justice, and of the Lords Justices of Appeal, is the peculiar function of the Lord Chancellor; but it may be possible that, in the fulfil-

ment of this duty, the Lord Chancellor sometimes consults his more exclusively political colleague, the Prime Minister, just as the latter may consult the Lord Chancellor respecting such appointments as that of the Lord Chief Justice, the Lords of Appeal, and the Master of the Rolls, which lie within his power of recommendation to the Crown. The exact apportionment of the measure of influence in every appointment may be difficult; but in respect of ordinary members of the High Court, the discretion of the Lord Chancellor is believed to be untrammelled; although it was said, a generation since, when a late Lord Chancellor retired, that one element conducing to it was his refusal to appoint as Judge a less worthy person pressed on him by a Prime Minister.

The judicial system of Scotland has differed widely in origin and history from that of England, and it still shows large differences of form, though not of principle. The Supreme Court consists of thirteen Judges, and is called the Court of Session on its civil, and the Court of Justiciary on its criminal side.

Court of Session is Supreme Court. From its civil judgments appeals go to the House of Lords; but its action is final in criminal matters. It is divided into two Houses: the Lord President and three Judges; the Lord Justice-Clerk and three Judges (forming together the Inner House); and five other Judges, who are the Lords Ordinary of the Outer House. The first two divisions are mainly Courts of Appeal from the Outer House, and the Lords Ordinary pass by seniority to fill vacancies in them. All the members of the Court are appointed by the Crown, and hold office *ad vitam aut culpam;* what constitutes *culpa* being apparently left without strict definition; but it seems to be assumed that Judges in Scotland are removable, as in England, on an address from the two Houses of Parliament. Probate and Divorce causes form part of the general work of the Court of Session, and the law of Scotland has never known the separation of Law and Equity which till lately

prevailed in England. The members of the Court of Justiciary go on circuit as in England for the trial of criminal cases.

Sheriffs. Scotland is divided into Sheriffdoms, sometimes including more than one county, each with a Sheriff under whom is one or more Sheriff-substitutes. Both Sheriffs and Sheriff-substitutes are appointed by the Crown *ad vitam aut culpam*, but they are removable by the Secretary for Scotland on report of *culpa* by the Lord Justice-General and Lord Justice-Clerk subject to the proviso in case of Sheriffs that such reports lie a certain time before Parliament. The Sheriff-substitute is a Judge of first instance while the Sheriff is mainly an appellate Judge though bound to hold a certain number of original sittings every year. Their civil jurisdiction is limited in respect of realty, and murder and treason are excluded on the criminal side. Appeals are carried from Sheriffs and in some cases from Sheriff-substitutes direct to the Court of Session. Sheriffs are always, and Sheriff-substitutes generally, advocates, and a Sheriff can practise outside his sheriffdom. The Procurator-Fiscal appointed by the Sheriff *ad vitam aut culpam*[1] has no parallel in English organisation. He is the Public Prosecutor in the Sheriff-court and under the direction of the Lord Advocate is the conducting agent in prosecutions in the High Court and Circuit Courts. A person aggrieved by an alleged crime can himself prosecute where the Lord Advocate directs the Procurator-Fiscal to concur or the High Court gives leave. The "Fiscal" moreover has the duty of inquiring into all doubtful cases of death and of outrage to person or property. He conducts these inquiries privately, holding no court and not taking evidence on oath. Memoranda of evidence thus got together are called precognitions; and it is only when a charge is formulated before a court that witnesses are sworn. Justices of the Peace are appointed by the Crown for divisions of counties, but they differ from English Justices in having little important work except that of licensing. In burghs

[1] He is removable only by the Secretary of State upon adverse report of the Lord President or Lord Justice-Clerk

the Provost or head of the municipality is always included in the Commission of the Peace.

The law of juries in Scotland differs materially from that of England. In criminal proceedings, not conducted under statute by way of summary procedure, a jury is associated with a Judge or Sheriff, though there are some exceptions, and there were formerly more in cases of light offences, tried by the Sheriff. A jury consists of fifteen persons, and a verdict of a majority suffices.[1] A verdict may be either "guilty" or "not guilty" or "not proven"; and a verdict of "not proven" is as final as any other.

In civil causes trial by jury had for centuries entirely disappeared in Scotland until partially introduced in 1815. It has since been extended, and juries are now obligatory in much the same class of cases as in England, whilst in other cases they may be used to try subsidiary issues. A jury in a civil cause consists of twelve persons, and a verdict of a majority is sufficient after a jury has been withdrawn three hours in deliberation.

Legal System of Ireland. The legal system of Ireland is modelled on that of England, the English conquerors having brought their Common Law with them and with it their modes of procedure. The Lord Chancellor of Ireland appoints Justices of the Peace in every county, and in those boroughs which have separate commissions. The principle of nominating justices on the recommendations of the Lords Lieutenants of counties has also been followed, but of late has been more freely modified by direct appointments at the discretion of the Chancellor. In Ireland however it has been thought necessary to supplement these unpaid magistrates by the appointment of paid resident magistrates nominated by the Lord Lieutenant, who were supposed to bring to the discharge of their duties a larger knowledge of law, if not a more judicial temper, than can always be found among country gentlemen. These resident magistrates may be discharged

[1] In cases of treason the jury is twelve and the verdict must be unanimous.

from the exercise of their functions by the Lord Lieutenant, and in times of political excitement they are liable to become the object of invidious attack as part of the Administration. Before the magistrates, resident and otherwise, prisoners apprehended under charge of crime are brought as in England and dealt with summarily or committed for trial at the Assizes or Quarter Sessions.

Administrative Law in Ireland. The administration of the criminal law differs however in this most material respect, that whilst in England any one who alleges that he has been wronged can institute and maintain a criminal process, and prosecutions are thus habitually undertaken, in Ireland the investigation and prosecution of crime are left in practice exclusively to the police and the other agents of the Government. In this way the agents of the Government have attained something akin to the protection which the *droit administratif* of most continental nations throws over their police and magistrature. This comparative immunity could be broken down by any 'village Hampden,' but remains unshaken. Something of this is perhaps due to the character of the police itself. It has been seen that in England the parish constable has developed into a County and Borough Constabulary, but the organisation and control remain local, although the central Government secures a uniformity of standard by making a contribution to the cost of these forces on the condition that they satisfy the requirements of itinerant inspectors. The constabulary of Ireland has nothing of this local character. It is everywhere recruited, organised, and directed by the Irish Government, which determines the numbers to be allotted to each county, and moves men and officers freely to and fro at its discretion, making the connection of the Administration with any county felt only when the county is called upon to pay for an additional force drafted into it in consequence of special local disturbance. The higher the efficiency of a force so pervasive, the greater must be its influence, and it is not surprising that it should practically engross the conduct of prosecutions. The relations

between the resident magistrates and the police tend at the same time to a confusion of administrative and judicial functions, and this does not allay that suspicion of officialism intruding into the organisation of justice which detracts from its authority in popular estimation.

Criminal Administration. Juries. The several stages of criminal administration in Ireland closely follow those of England. Prisoners committed for trial come before Judges going circuit at the Assizes or before the Courts of Quarter Sessions; subject however to the observation already made that the prosecutions are always conducted by Government officials. The choice of juries moreover is by no means so simple. The right of challenge by the Crown is freely exercised in times of political excitement with the avowed intention of obtaining jurors who may be trusted to give true and unbiassed verdicts; but the process easily lends itself to the accusation of packing juries with jurors who may be trusted to convict. The necessity of such a sifting is odious, but very few deny it. Jurors who are habitually told that they cannot be trusted are not likely to develop the sense of responsibility; and in the long run it is better to trust juries too much than too little. The same considerations that have led to the appointment of resident magistrates to assist unpaid magistrates in Petty Sessions have led to the appointment of paid Chairmen of Quarter Sessions. These latter gentlemen are also the Judges of County Courts.

Irish High Court. Above all these there exists a High Court of Justice in Dublin just as in England. As the Common Law was imported into Ireland, a Court of Chancery duly followed with its larger principles of equity; and Common Law Courts and Chancery Courts existed side by side until in 1877, following the precedent set in England four years before, they were united in one Court administering the same system of jurisprudence, though for more convenience of business separated into Divisions to which different kinds of work are appropriated. The Common Law Division, when it assumes its final shape, will consist of the Lord

Chief-Justice and nine other *puisne* Judges; and the Chancery Division of the Lord Chancellor, the Master of the Rolls, and one other. The Court of Appeal will consist of the Lord Chancellor, the Lord Chief-Justice and the Master of the Rolls (though these two rarely sit) and two Lords Justices. From the Court of Appeal cases go to the House of Lords as in England.

CHAPTER III

The Established Churches

The Church of England. In the early history of England the organisation of the Church was the most powerful of all checks on the authority of the King and of Parliament. Judges could be removed at the royal pleasure, and if removed fell into the ranks of ordinary life; but no bishop could be deprived of his episcopal authority, and interference with him in the enjoyment of his temporal possessions was not lightly ventured upon. There was an outside power which might be provoked to some terrible action, and the excommunication of a king by a bishop might be followed by the interdict of a kingdom by a pope. All this has long since passed away. In the present working of the constitution the most important factor connected with the Church is the presence of two archbishops and twenty-four bishops in the House of Lords.[1] These would form a large proportion of the active forces of that assembly if they were themselves active in it; and in matters specially affecting their own opinions they often turn the scales and indeed keep the scales turned; but in the general work of Parliament they are not prominent. The nomination to vacant bishoprics is made by the Crown on the advice of the Prime Minister;

[1] Dioceses have of late been subdivided, so that there are now more than twenty-four bishops, but the number entitled to sit in the House of Lords has not been increased.

but, as has been intimated elsewhere, it may occasionally happen that the favour of the Sovereign has more influence in such appointments than is common in relation to offices of State. Deaneries and a large number of canonries are filled up on the nomination of the Crown by the advice of the Prime Minister, and a large number of livings as well as some canonries are in the gift of the Lord Chancellor; but, while appointments are thus made by and with the advice of the most eminent officers of State, the persons appointed have no especial political privilege or function.

For the rest the whole kingdom may be said to be divided into parishes, the rector or vicar of each being a corporation with a certain endowment. But except in relation to these endowments these clergymen do not differ from ordinary citizens, having now no special civil right even within their parishes. It is their exclusive right to conduct religious worship in their several churches; but the churchyards are open under regulations to burials by others; and since 1894 they are no longer *ex officio* chairmen of parish vestries for civil business.

The Church of Scotland. The existence of the Church of Scotland is carefully safeguarded in the Act of Union. Every succeeding sovereign is sworn to maintain its organisation, and the Confession of Faith to which its officers are required to adhere is of statutory obligation. In each parish the minister and elders constitute the kirk session. For a group of parishes the minister with one elder from each parish constitute the presbytery. A group of presbyteries constitutes a synod; and above the synod is the General Assembly in which the presbyteries, the Royal Burghs and the Universities are represented. Given the permanence of its doctrinal symbols and of its organisation the government of the Scottish Church may be said to be purely democratic. This was indeed formerly qualified by the rights of patrons to nominate ministers in certain parishes; and the decision of the law-courts, affirmed in the last resort by the House of Lords, that the Assembly could not invest a congregation

with a power to veto such an appointment, led to a great disruption in 1843, as a result of which a Free Church of Scotland was established possessing the same standards of doctrine and the same organisation as the original Church and differing from it only in the fact that its property and income are derived from voluntary offerings of deceased and living members, and that no right of patronage interferes with the free choice of congregations. There had been previous secessions from the Established Church of several bodies which ultimately united under the name of the United Presbyterians as a purely voluntary body apart from the State; and in 1900 this association and the Free Church joined together under the title of the United Free Church; but the validity of this union was disallowed in 1904 by the House of Lords as involving a departure from the principles upon the bases of which the Free Church had been organised and its property gathered together. To return to the Established Church—the cause of the controversy which led to the disruption in 1843 was removed in 1874 by an Act abolishing patronage and vesting the choice of ministers in parochial communicants and adherents. Save in the possession of a limited national endowment of manses and teinds, there is now little to distinguish the Established from the Free Church. In freedom of internal life it occupies before the law precisely the same position as the unestablished religious communities, whether of England or Scotland, the administration of whose trusts may become the subject of an appeal to the judgment of courts of law.

CHAPTER IV

The Army and Navy

Parliamentary Control. It results from what has been already said, that the Army and Navy have become strictly the creatures of Parliament. Men are recruited and

officers are commissioned in the service of the Crown; but in this, as in every other connection, the Crown stands forth as the impersonation of the realm, and the action of the Crown is supported, not to say directed, by the advice of Ministers. The Army and Navy exist to protect the nation, and to fulfil the policy which may be determined upon by Ministers possessing the confidence of Parliament. All this is attested by the subordination of the military arm to the Secretary of State for War, and of the Navy to the First Lord of the Admiralty; and, as if to emphasise the civil supremacy, both the War Secretary and the First Lord are almost invariably civilians. There can be no question indeed as to the supremacy of the civil power. This is secured in the first place by the dependence of both services upon Parliament for the votes which sustain the cost of their existence. Unless the House of Commons renewed annually its fitting appropriation, the Army and Navy would soon cease to be. This is not all. Soldiers have been known to serve though irregularly paid, and even for a limited time without any pay at all; but there remains in the United Kingdom another safeguard against the continued coherence of an armed force which has not received the sanction of Parliament. The discipline of the Army depends upon a special code of military law, and this code is made applicable from year to year for twelve months only, so that unless its force is renewed by an annual Act before the expiry of each term the bonds of law keeping the Army together as an organised force would be dissolved.

The Mutiny Act. The situation thus stated has been gradually developed since the great Revolution of 1688. Up to that time Parliament refused to recognise a standing army in time of peace, and no law had been enacted for the government of such an institution. In time of war the prerogative of the Crown was construed to extend to the publication of "Articles of War" governing the military forces in the field. The necessity of a standing army was soon recognised under William and Mary; and a statute, limited however to less

than a year, was passed for its regulation. Even this was not renewed with perfect regularity, and the special law was allowed to lapse altogether for three or four years at the close of the seventeenth century when domestic and foreign peace seemed to be assured. On the accession of the Hanoverian dynasty the statute was revived and completely established as the Mutiny Act, and as such renewed from year to year with modifications and additions down to 1879. It contained a code of law for the government of the Army in peace at home, soon supplemented by a power it conferred on the Crown to issue Articles of War for the regulation of the Army throughout the King's dominions; the prerogative power of the Crown in time of war not being dealt with till 1803, after which date the Mutiny Act covered this prerogative also. The last great change was effected in 1879. In that year all the provisions governing the military forces, whether contained in the Mutiny Act or in Articles authorised by that recurring statute, were collected together in one Act of Parliament which may be described as the military code; and this Act has ever since been applied, sometimes indeed with modifications and additions, by a short annual Act to the number of the forces annually authorised. Without therefore going through the labour of revising every clause of the code afresh, Parliament retains complete command over it, for without a renewed sanction in reference to defined numbers its force would expire.

Functions of the War Secretary. The civil head of the military organisation of the kingdom is the Secretary of State for War. This unity of administration is of comparatively recent origin. Up to and during the earlier years of the Crimean War, the Secretary of State for the Colonies had the direction of military operations abroad, whilst military organisation at home was under the control of the Secretary at War. The experiences of that war compelled a rearrangement of functions and the creation of a new department. The War Secretary has under him all

staff necessary to direct and register the movement of troops, distribution of pay, and the provision of supplies; and it is his duty to select and recommend the fittest persons for high appointments whether under the organisation of peace or for service in the field. As the special agent of the resolutions of his colleagues and himself in the Cabinet, he organises expeditions and sees generally to the execution of the military policy of the Government.

Quite recently indeed the War Secretary has been assisted by a sub-committee of the Cabinet, to which has been given the name of the Council of National Defence, consisting of himself, the First Lord of the Admiralty, the Foreign Minister, and two or three other colleagues, whose duty it is to bring the forces of the Crown into correlation with one another and to assist the Cabinet in forming its decisions on all questions involving warlike operations.[1] This Council is however rather an aid to the Cabinet than to the War Minister, who remains charged with all the executive functions of his office. For their due performance he is in constant communication with the Commander-in-Chief and other heads of the working army. He interferes in no way with the discipline of the service, and when the Army is engaged in warlike operations, the actual conduct of affairs in the field is necessarily left to the Generals appointed for the purpose, though the aims of their action are directed by him, and he regularly receives reports of what they are doing.

Military Organisation. The distinguishing characteristic of the British Army is that it rests upon a basis of voluntary enlistment. Men satisfying prescribed limits of age and stature are invited to enter the service, and the recruit fulfilling the necessary conditions binds himself to serve for a term of years which differs in its length according to the corps he joins. The fighting force is divided into regiments of cavalry and infantry and batteries of artillery, and the

[1] By a new arrangement (1904) this committee includes beside Cabinet Ministers representatives of the services.

recruit enters into one of these divisions. Promotion to the position of a non-commissioned officer is always open to him; but the commissioned officers form a separate order into which an occasional private may enter as the reward of special and distinguished merit. The mass of officers in the cavalry and infantry obtain their commissions as the prizes of competitive examinations which are open to candidates satisfying prescribed conditions; whilst engineers and artillery officers are trained in a special school into which cadets enter as the result of other competitive examinations. A limitation of a very effective kind is placed on the supply of candidates for commissions in the Army by the fact that the ordinary pay in the lower ranks is quite insufficient to meet the inevitable expenses of the officer, the disproportion varying with the different arms. The Commander-in-Chief is responsible to the Secretary of State for all promotions. In this he is assisted by a board comprising the heads of departments, and furnished with confidential reports concerning the qualifications of every officer; and officers who do not within prescribed limits of time pass from any one grade to that next above it are forced to retire on defined money terms. About one-third of the Army habitually serves in India, and the whole cost of this portion is borne by the Indian Government.

Auxiliary Forces. The Militia was originally a strictly local force organised under the authority of the Lord Lieutenant in each county; but it is now wholly directed and controlled by the Secretary of State, and differs from the regular army in that the men enlist for six years only, are called out for drilling for a limited period in each year, and are not liable for service outside the United Kingdom. The enlistment for the Militia is in fact voluntary, but an unused statutory power exists for supplying deficiencies in voluntary enlistment by a ballot. The Militia is now officered on the same principles as the Army, but the position is less burdensome and more accessible, and facilities are given for the passage into the Army of Militia officers of

approved service. It constantly happens in time of war that Militia regiments volunteer for garrison duty outside the United Kingdom, and they do in fact often furnish large drafts to the army in the field.

Other auxiliary forces are the Yeomanry, a local cavalry of from 10,000 to 12,000 men, and the Volunteers, numbering some 250,000, who, as their name implies, offer themselves for drill and service. They were originally self-supporting; but they now receive allowances in money and outfit which have been gradually extended. In ordinary circumstances volunteers satisfy certain conditions of drill and efficiency, and after a varying number of years of service retire as voluntarily as they enter; but they are liable under stress of apprehended invasion to be called out, and to be kept serving till the danger passes away; and at such a time, as also when associated with the regular forces for training, are subjected to military law. During the late war several special corps were formed of volunteers who offered themselves for active service in South Africa.

Board of Admiralty. The civil administration which governs the Navy presents at first sight a different appearance from that governing the Army, since a Board of Admiralty takes the place of the War Secretary. The Board consists of four Lords appointed to execute the functions of the Lord High Admiral, an office which has been in abeyance for nearly two centuries with the exception of a short interval in 1827–28; but the First Lord is pre-eminent among these, and his political position is now almost identical with that of the War Secretary. He is always a member of the Cabinet, and the policy and great movements of the Navy being determined upon by himself and his colleagues, he becomes the agent of the Cabinet in carrying out their decisions. He has at his right hand a First Naval Lord who is always an admiral of experience and authority, but he remains supreme as well over the general service of the Fleet as over appointments and promotions. The fourth Lord assists him in Parliament under the title of Civil Lord, whilst the Secretary

of the Admiralty, holding technically a position subordinate to that of the Lords other than the First, but in reality of greater parliamentary authority, also assists the First Lord in the discharge of his parliamentary duties. When, as has happened more often than not, the First Lord is a peer, the Secretary takes the lead as responsible Minister in the House of Commons, and, having the conduct of the estimates for the Navy, occupies a position of considerable importance. Other branches of the naval service are under the direction of chiefs not sitting in Parliament, who work in constant co-operation with the First Lord, upon whom rests the full responsibility of the department. Technically the status of the First Lord is below that of a Secretary of State, but it is believed that no trace of this subordination is now found existing in practice, and the First Lord is in the same relation to his colleagues in the Cabinet in respect to the Navy as the War Secretary in respect to the Army.

The Navy. The men who serve in the Navy are, like those in the Army, divided into two classes, commissioned officers and the ranks; and it is most rare for any one to pass from the latter to the former. The supply of officers is drawn from youngsters who are allowed by the First Lord to compete for entrance to a naval college, where they are educated and trained and whence they are ultimately sent afloat. They are promoted from step to step as in the Army, and in a similar way are forced to retire if, at defined periods, they do not rise from one grade to another. It should be observed that the pay of naval officers is not so disproportionate to the necessary or standard scale of expenditure as in the Army, and it may be added that ambitious and active officers specially qualifying themselves in navigation, gunnery, torpedo-work, etc., may obtain relative appointments carrying with them additional rates of pay, in which case an officer finds himself at a comparatively early age with an income adequate to his expenditure. The naval code under which discipline is maintained in the fleet, and when necessary courts-martial held, is found in an Act

passed in the year 1866; and it must be added that it is not necessary as in the Army to apply this Act annually to the personnel of the Navy, the members of which remain continuously subject to its provisions without a special renewal.

CHAPTER V

The Civil Departments

Civil Service. Every Minister of the Crown has a separate department with separate duties, but he is assisted in the discharge of his special functions by an organised body of servants whom he finds at work when he enters upon his office, and most of whom will in all probability be left remaining at the work after he has resigned his post. These men, with stores of personal and inherited experience, maintain the traditions of their several departments, and are of the greatest help both in knowledge and in suggestion to their political chiefs. The latter may be quite new to the special work to which they are allotted, and they must needs depend upon those who are familiar with it. But, at the same time, the statesman brings into his bureau something of the activity and power of the outer world, and at the lowest he should save his subordinates from lapsing into that worship of routine, and from that setting up of the persons who serve above the aims to be served, which are the besetting sins of office. The Minister and his subordinates, working together and correcting one another, generally succeed in maintaining a high standard of prompt and efficient service.

Permanency of position is the rule of the Civil Service, and is generally accepted as a condition and as a guarantee of its high character. Every civil servant is secure in his office during his good behaviour, at least up to the age (sixty-five), when the rule of the service requires him to retire. This security has indeed a tendency to diminish the energy and vivacity of work, especially if promotion is allowed

to depend upon years of service with little attention to the character of the work performed; but apart from the recognition of merit, which is not wanting, zeal of office may generally be trusted. One of the difficulties in the organisation of the departments is that in most of them there is a great deal of work to do requiring no special qualifications beyond regularity and fidelity in routine. It is in view of this fact that two classes of clerks have been established, the Upper and the Second Division. Until 1855 all clerks of every class owed their first appointments to favour, but in that year a method of competitive examinations was introduced which has since been extended till it is now practically universal. There are however a few appointments—the very highest, such as Under Secretaryships—which may be filled, and not unfrequently are filled, by selection from without. Such an extended power of choice is useful in adding to the efficiency of an office, while the interest of the head of the office who makes the choice, in the capacity of his nominee, is so great that the risk of abuse of patronage disappears. In this way the permanent service of the department is built up, whilst it is crowned by the political personage who comes to it out of the struggles of public life, into which after a season he probably returns.

The Treasury owes its supremacy to the facts that all the services for the raising and collecting of national revenue are under its direct control, that the estimates of expenditure by the several departments pass under its supervision before being laid before the House of Commons, and that no new branch of expenditure can be undertaken without its sanction. The Chancellor of the Exchequer, the acting chief of the Treasury, is charged with the duty of keeping the national finances in order, and his action is directed to restraining expenditure as much as to raising revenue. The Customs, Inland Revenue (including direct taxes, stamps and excise), the Post Office, the Crown Lands are all under the immediate control of the Treasury, and though in the case of the Army and Navy, the Chancellor of the Exchequer does

not so much check expenditure in detail as limit its total amount, yet in respect of these departments as throughout the Civil Service, the necessity for the Treasury's approval secures similar forms of organisation and similar standards of pay in all branches of the service.

The Home Office ranks after the Treasury in the importance of its executive functions, from which indeed the functions of the other departments have been successively detached. It is the channel of communication between the Crown and the subject. It is responsible for the preservation of the King's peace, having the appointment of the stipendiary magistrates, and exercising a large degree of supervision over the unpaid magistrates. It is also charged with the proper detention of prisoners, and the exercise of the royal prerogative of pardon. This last duty involves the revision of the evidence in practically all cases where a sentence of death has been pronounced, and in a great number of others. The Home Secretary has likewise under his care the administration of the metropolitan police which number about one-fourth of the entire police force of the country. But in addition to these important executive functions the expansion of local government has laid extensive regulative duties upon the shoulders of the department. The bodies of police now universally established under the direct control of local authorities in all the counties and in the larger boroughs have to satisfy the inspection of the Home Office before they receive the Government subsidy which amounts to one-half of their cost. An entirely new sphere of activity has moreover been created for the Home Office by assigning to it the administration of the numerous Acts passed for the protection of the labourer in factory, workshop, or mine, which has entailed the creation of a large staff of inspectors.

The Postal service is an example of the discharge by the Government of a large national business, the branches of which have of late years been extended by the carriage of parcels as well as of letters, by providing facilities for the transmission of money, by Post Office Savings Banks, and

by the addition of the Telegraph Service. It may now be assumed that telephonic communications will also be engrossed by the Post Office. They have been judicially declared to lie within the Post Office monopoly, and they are now conducted by other agencies on condition of paying royalties to the Post Office. Besides these extensions actual and potential of the Post Office itself, there are various proposals in the air for nationalising other services, in respect of which present experience may be a precedent. The Central Bureau of the Post Office is organised much on the same plan as the other departments already noticed, but it has under it in London alone a large number of collecting-houses, each with a staff and an army of sorters, distributors and messengers; and the continual extension of country offices has developed a still vaster force of postmasters, clerks, and, at the base, of weekly wage-earners. It is obvious that competitive examinations could have little to do with entrance into such a system, and until recently the smaller postmasterships in the country were in the gift of the local members of Parliament supporting the political party in power, or if there was no such member, of some other person as nearly as possible corresponding to him in station and supporting the Government. This last relic of patronage was abandoned in 1896, and all appointments to postmasterships and promotions are now made by the Postmaster-General aided by the advice of the Surveyors of the several districts in which the kingdom is divided and by the credentials of past service. Appointments on the staff of the post offices are made in the same way, while entrance to the lowest grade of clerkships and the choice of subordinate and auxiliary letter-carriers is left to the local postmasters themselves, subject of course to dismissal by higher authority in case of incompetence or misconduct. The rates of pay vary from district to district according to the current local standards of wages, but are regulated from head-quarters; and entrance on the staff, which carries with it a title to pension, is checked by the necessity of passing a qualifying examination under the Civil Service Commission.

The Board of Trade derives its origin from the attempts of the Stuart Kings to regulate commerce in the supposed interests of national welfare. A truer theory of trade has discountenanced the spirit of ill-advised interference which characterised that period, but a more useful side of its earlier activities—the collection and diffusion of information—has been preserved and widely extended in its Commercial, Labour and Statistical Department, which yearly puts forth a great mass of well-arranged information upon every aspect of home and foreign trade, the conditions of labour, emigration, etc. But besides its work as an intelligence department the Board of Trade has acquired a number of important regulative functions, most of them dating from the middle of the last century. It possesses powers of inspection over the construction and working of railways, canals and tramways, over the shipping and personnel of the Mercantile Marine, over harbours, lighthouses, pilotage, etc. It provides and maintains the standards of coinage and of weights and measures. It keeps a register of joint stock companies and examines the accounts of life-insurance companies. It is responsible for the administration of the various Acts dealing with such matters as bankruptcy, trade marks, copyright, the testing of gas and petroleum.

The Board of Agriculture which was established in 1889 by drawing together a number of administrative functions hitherto performed by the Privy Council, the Land Commissioners and the Commissioners of Works, is modelled after the example of the Board of Trade. It has an Intelligence Division for the collection of statistical and other information relating to agriculture, for the better dissemination of which it edits a quarterly *Journal*. The regulative side of its work is comprised in two other divisions, one of which is mainly concerned with the prevention and suppression of contagious diseases amongst animals, and the other with the working of the Tithe, Copyhold and Enclosure Acts. The Board employs a chief agricultural analyst to investigate the quality of fertilisers and feeding-stuffs, and the Ordnance

Survey and the Geological Survey are now carried on under the Board's control.

The Local Government Board is of modern origin. Its functions spring from the new administrative conditions created by the series of reforms in central and local government which commenced in 1832. Each great achievement of parliamentary reform effected during the last century was closely followed by the reconstruction of local institutions which was necessary to give the newly-enfranchised classes a due share in local self-government. Until then, local administration had been for many centuries very largely in the hands of the Justices of the Peace. The justices had played a not unworthy part in English political development. They were nominated by the Crown, but they had to be chosen out of the gentry resident in each county, and their services were unpaid. Whilst, therefore, they represented the royal authority in their several districts, their independence served to keep the central government from ignoring or outraging local feeling. In this way they provided a natural link between the Crown and the people, and their public spirit rendered impossible and unnecessary the growth of a large class of Crown officials similar to that which grew up in France and Germany, and which still has a large part of the local government of those countries in its hands.

Poor Law Reform. The administration of the Acts passed in Elizabeth's reign for the relief of the poor had been placed in the hands of overseers chosen for each parish, and only came indirectly under the control of the justices, but subsequent legislation gradually rendered that control complete. By the time of the first Reform Bill the question of poor relief had, owing to the growth and increased mobility of the population, become a matter of grave national concern; and the administration of the justices, guided as it too often was by motives of mistaken benevolence or of local or private interests, was leading to an enormous increase in pauperism. An attempt was made to remedy these evils by the Poor Law Amendment Act of 1834. A larger unit for poor law

purposes was created by joining together when necessary a number of adjacent parishes to form a Union; and the local administration was transferred to a new body of Guardians elected in part by the ratepayers, but of which the local justices remained *ex officio* members till 1894. But the most essential feature of the new arrangement was the establishment of a central department capable of exercising a constant and effective control over the local administrators of the poor law. The Board of Poor Law Commissioners was empowered to prescribe very largely the methods to be followed by the Guardians, to inspect, and, if necessary, to dismiss their officers, and to audit their accounts twice a year. This new central department served as a nucleus around which the larger functions of the present Local Government Board have gradually collected.

The Reform of Municipal Government which was taken in hand a year later followed different lines. The privileges granted to the towns by early kings had originally served as bulwarks of freedom and self-government against the oppressive feudalism that surrounded them. But as feudalism decayed these privileges had passed into the hands of small coteries of burgesses which were usually self-elective and too often inefficient and corrupt. The Municipal Corporations Act of 1835 replaced these close corporations by the town councils which still manage our municipal affairs and in which the councillors are elected by the ratepayers for the several wards, the aldermen are co-opted by the councillors, and the mayor is chosen by councillors and aldermen. The principle of representation as applied to local government which had been adopted in poor law administration thus received an important extension. But in one essential feature the new town councils presented a striking contrast to the new boards of guardians. With the exception of one or two matters such as the raising of loans and the disposal of corporate property, scarcely any provision was made for the interference of the Central Government with the municipal bodies in the sphere of activity assigned to them. Such control and

inspection as are now exercised by the Local Government Board are mostly due to subsequent legislation, which has expressed a growing need recognised by public opinion for uniform regulation in certain matters which affect the welfare of the nation as a whole.

Sanitary Reform is one of the foremost of these matters, since if it is left to local initiative, the more progressive districts are liable to suffer for the sins of their more backward neighbours. For this reason the main efforts of sanitary reformers were directed towards establishing a central authority with power to insist on the maintenance of uniform sanitary conditions. Their first great success was achieved in the passing of the Public Health Act of 1848, by which a Board of Health was set up after the example of the Poor Law Board, but with much more limited powers. This central board was to act in conjunction with elected local boards which it could create at the request of the ratepayers, or in case of specially unhealthy districts upon its own initiative. The town councils by adopting the Act could assume the position of the local authority in sanitary matters. Many of them did so, and were thus brought into closer relations with the Central Government. In the rural districts the Boards of Guardians came in many cases to be invested with the duties of the local sanitary authority. The central Board of Health was dissolved in 1852, but most of its functions were distributed amongst the other departments; and in 1871 they were collected once more and placed together with those of the Poor Law Board in the hands of a new department to be known as the Local Government Board. The laws relating to public health were soon after revised and codified in the Public Health Act of 1875.

County Government. By the creation of separate, partly elective bodies for the purposes of local sanitary and poor law administration, and of similar bodies to administer the highway rate, the original powers of justices of the peace in county government had been gradually encroached upon; but it was not till 1888 that the remainder of those powers

was transferred to an elective body representing the county as a whole. In that year an Act was passed establishing within each county a County Council elected practically by ratepayers male and female in single-member districts for a term of three years, with an added number of aldermen co-opted by the elected members for six years to the extent of one-third of the elected councillors. To this body all the administrative work of the county justices was transferred, except in respect to the police, which was placed under a joint-committee equally representing the justices and the County Council. Other work was added, and the functions of the County Council have since received and may be expected to receive continuously large additions. Boroughs lying geographically within a county, having a population of 50,000 or more, were however exempted from these organisations. They were styled county boroughs, and their councils were invested with all the powers of County Councils so far as they did not already possess them.

In 1894 the framework of local self-government in the counties was completed by the establishment in each parish of an elective council to manage its affairs except in the smallest parishes where a periodic parish meeting was charged with these duties; the existing urban and rural district councils serving as an intermediate authority between the parish and the county.

Relations of local to Central Government. From the foregoing brief survey it will have been seen that the functions of the Local Government Board have grown up gradually as the natural counterpart of the extension of local self-government on representative lines. They have not been assigned to it on any uniform plan, but are the cumulative result of a series of experiments, and consequently the character of the relation between the central department and the several classes of local authorities differs considerably in each case. The amount of control exercised is greatest in the administration of the poor law and of the laws relating to public health. In these matters the department not only

maintains a constant inspection over the efficiency of the work done by local bodies, but also frequently dictates the policy to be pursued by them. In other departments of local government the control exercised is of a more indirect character and takes the form of a regular oversight of the finance of local bodies other than town councils. Their accounts are audited every half-year, and any undertaking which involves the borrowing of money has to be sanctioned by the Local Government Board—a control which extends to town councils. This relative abstention of the Central Government in England from direct interference with local administration presents a marked contrast to the methods followed in France and Germany where the largest part of provincial and municipal administration is in the hands of officials appointed by the Central Government, and where the locally elected bodies are mainly confined to consultative functions.

The Board of Education, which in its present form is the most recently constituted of all the departments, embraces under one authority the regulation of primary, secondary and higher education in so far as this is undertaken by the State. The present system has gradually grown up out of (1) the provision of Government grants in aid of schools carried on by voluntary effort and the consequent inspection of such schools by Government officials; (2) the establishment by means of local authorities empowered to raise a local rate of new schools where voluntary effort proved inadequate. An attempt was made to reduce this two-fold system to some degree of unity by the Education Act of 1902. The local school boards, which had since 1871 controlled a constantly increasing proportion of primary education, were abolished, and the direction of education, whether primary, secondary or higher so far as supported from the local rates, was placed in the hands of the County Councils for the counties and of the Borough and Urban District Councils for the towns. Voluntary schools were henceforward, like the publicly provided schools, to receive support from the local rates as

well as from the Government grant, and their managers were to retain possession of the buildings and the appointment of the teachers. Secondary and technical schools may also be provided out of the rates and receive a special grant from the Government. The main function of the Board of Education is to maintain a constant inspection of the schools both as to the adequacy of their material equipment and as to efficiency of their teaching, and to determine upon the bestowal or withdrawal of the Government grant. But this involves a large amount of positive direction such as the formulation of periodical codes which necessarily impose a certain degree of uniformity on all education supported by the State. The former Science and Art Department, which had by its system of examinations and the grant of certificates fostered the growth of a widespread system of evening classes, is now incorporated in the Board of Education. The Board also maintains an intelligence department, whose special function it is to collect and render accessible the latest information as to the educational progress of other countries.

CHAPTER VI

Scotch and Irish Administration

Secretary for Scotland. The Minister primarily responsible for the government of Scotland was, and remained down to 1885, the Home Secretary. Upon him had descended the functions of the whilom sole Secretary of State, and he had the charge of the government of Scotland, as he had at one time of that of Ireland also. In the discharge of his parliamentary responsibilities he was assisted by the Lord Advocate, the principal law-officer of the Crown in Scotland, to whom a seat in Parliament was a necessity. This functionary, in subordination, often little more than nominal, to the Secretary of State, conducted the parliamentary business of the North; and practically administered

much of its patronage. As the functions of government developed, and new offices were created, the heads of the departments thus called into being carried their work throughout Great Britain. Public education in Scotland thus came to be under the same Minister as public education in England; and similar examples might be cited. In 1885 however a new departure was made. A special office was created, that of a Secretary for Scotland, and to this functionary was given the work which had been distributed over many departments,—the Home Office, the Local Government Board, the Education Department, etc.; whilst the Lord Advocate was subordinated to the new Minister. The Secretary is not, it must be observed, a Secretary of State; and he is only occasionally a member of the Cabinet.

Irish Administration. At the head of the administration of Ireland is the Lord Lieutenant or Viceroy, who is the immediate representative of the Crown, and discharges all the functions of sovereignty, as he is environed with all the formalities of a court. All appointments are made by him, and all administrative acts are executed in his name. This position is however very different from that of a Governor of a self-governing colony. He has no Ministers to whose advice he must listen because they possess the confidence of a representative assembly. He is himself one of a Ministry with whom he is directly or indirectly in constant consultation and as whose delegate he comes to Dublin. He is commonly, though not of constitutional necessity, a member of the House of Lords, and if he leaves Ireland he appoints Lords Justices to execute his functions in his absence. He has a Chief Secretary who represents him in the House of Commons, and who is in truth his responsible Minister before that Assembly. The separation of power between the Viceroy and his Chief Secretary is not however absolutely determined. The salary of the Lord Lieutenant is charged upon the Consolidated Fund, so that his acts do not regularly come before the House of Commons in Committee of Supply, whilst the salary of the Chief Secretary, which is voted

annually, is always used as an opportunity of criticising the policy of the Irish Government. In this respect there is some approach to an analogy between the relations of the Lord Lieutenant and his Chief Secretary, and those of the Crown and its Ministers; and it has not unfrequently happened that, whilst the Viceroy discharges the ceremonial function of his office, the Chief Secretary is a member of the Cabinet upon whom the real duty rests of originating, if not determining, the Irish policy of the Government. On the other hand, the Lord Lieutenant may be a member of the Cabinet, and his Chief Secretary the executor of his policy It must indeed be remembered that the solidarity of the Cabinet in respect of Ireland as of all other matters is complete; and the point now insisted upon is no more than this, that the representative in the Cabinet of the Government of Ireland, who, as a member of the Cabinet, leads and conducts its Irish policy, is sometimes the Lord Lieutenant and sometimes the Chief Secretary. It is not long since neither was a member of the Cabinet.

CHAPTER VII

India and Colonial Offices

The India Office. The Act of 1858 by which the government of India was transferred from the East India Company to the Crown created a Secretary of State for India, a member of the Cabinet which in its solidarity joins in his counsels and shares his responsibilites. The Act, however, associated with him a special Council of fifteen paid members appointed at first for life and now for a term of ten years with power of extending the period. The members of this Council were at first a few of the directors of the old Company associated with men who had returned home after having served in civil and military capacities in India. It is now, with the exception of a member or two chosen for their

commercial knowledge and occasionally a retired Indian Judge, confined to retired Indian officials, civil and military. The whole government of India is subordinate to the Secretary of State and his Council much as the government of a Crown Colony is under the Colonial Secretary, though the vastly greater sphere of its operations compels the relinquishment of details and the allowance of a greater discretion in higher matters to the Government in India. No charge can be imposed upon the revenues of India except by the authority of the Secretary of State in Council, though it is claimed that in matters of urgent necessity the Secretary of State can issue his orders without the concurrence of his Council. The Act moreover provides that no military expenditure shall be incurred at the cost of India outside the frontiers except on the authority of express votes of both Houses of Parliament. Nor can additions be made to the debt of India except under Act of Parliament.

Colonial Office. A word or two may be said about the Secretary of State for the Colonies, although the nature of his work can be best understood from a study of preceding and subsequent chapters. The difference of his functions in relation to Crown Colonies and to colonies possessing responsible government, which is very striking, may however be pointed out here. The Colonial Secretary governs the Crown Colonies. Whilst their institutions differ in detail they are all shaped to this end—that the Colonial Secretary, either through the executive officers he nominates or by the control he exercises over such representative institutions as they may have through nominated members of them inspires, and regulates the domestic administration of each colony, determines the laws to be adopted in them, and overrules their finances. As regards self-governing colonies the Colonial Secretary does little more than watch their action. The autonomy of such is complete as respects internal affairs, and the most responsible duties of the Colonial Secretary are to appoint governors from time to time to fill the functions of a constitutional sovereign, and to take care that no legislative

or other action in the colony goes beyond the limit of its jurisdiction so as to interfere with other parts of the Empire or with the foreign relations of the Crown. A new departure of considerable importance was made by Lord Knutsford calling a conference between himself as Colonial Secretary and representatives of self-governing colonies, an experiment which has since been repeated and will probably lead to further developments.

CHAPTER VIII

Foreign Relations

The Crown represents the nation in all relations with foreign powers. It sends its Ambassadors and Ministers abroad, and receives in turn Ambassadors and Ministers accredited to its court. Every agreement made with a foreign power in times of peace is made in the name of the Crown. Every declaration of war is a declaration in the same name. It is indeed true that many agreements are formally made subject to their fulfilment by Parliament. Any agreement, for example, to guarantee a loan, to make a subsidy, or to change customs duties require the concurrence of Parliament to become effective; and the necessity for such a concurrence is always reserved in the treaty. Treaties of peace very commonly, though not necessarily, involve articles which must be invalid without parliamentary support. Whether a cession of territory requires such sanction is disputed. There are decisions of the Privy Council pointing to a negative conclusion; but the cession of Heligoland in 1890 was incorporated in a Bill submitted to Parliament, and this precedent has been followed in the parliamentary confirmation of the recent treaty with France.

Declaration of War. It has often been argued that the power of the Crown to declare war should be limited by the necessity of direct parliamentary sanction; and the pro-

vision in the Constitution of the United States requiring an Act of Congress in such a case has been quoted to support the argument. It may however be remembered, in the first place, that a declaration of war, like every other act of the Crown, can only be made on the responsibility of a Minister, and no Minister would advise such a step without being well assured of parliamentary support—greater confidence may perhaps be placed in the sense of responsibility of a Minister who has to recommend than of an Assembly which has to concur; and, in the second place, that a declaration of war necessarily involves a demand for money to meet the expenditure of war, and Parliament must be immediately summoned and asked for the necessary supplies. This doubtless comes after the fatal step has been taken, and it may be urged that some members of the House of Commons might be found to oppose a declaration of war who would not oppose a grant of supplies after war had been declared; but this is doubtful. Wars have however been rarely or never undertaken upon such narrow balances of opinion, and although Ministers have been known to inflame the public mind, it has perhaps oftener happened that the nation has pushed on reluctant Ministers.

The example of America. The reliance which thinkers of a former generation were disposed to put on the sobriety of national judgment can hardly be said to have been justified by the experience of those countries in which democratic institutions have been most developed. We could not indeed introduce into our constitution any limitation like that existing in the American States without creating some new and unexampled Power among us. The Senators of the United States possess an authority to which the House of Lords cannot pretend, and an independence of transitory popular passions not to be found in the House of Commons. There is yet one more observation to be made. Although the causes of a war may be long maturing, the necessity which compels its outbreak may come too suddenly to allow a reference to a consultative authority. Even in the United States the Government has practically found itself at war

with a foreign power without time to ask for an Act of Congress, and the difficulty has been disguised rather than overcome by describing what was war as military operations. On the whole, we must believe that the power of declaring war will continue part of the prerogative of the Crown exercised on the advice of responsible Ministers.

Ministerial responsibility for Foreign Policy. It has been sometimes suggested that this proposition, *i. e.* that every act of the Crown is undertaken on the responsibility of a Minister, must be qualified in relation to the conduct of foreign affairs. Ministers, it is said, come and go whilst the Sovereign remains. Reference has already been made to the weight due to the prolonged experience of the Sovereign coupled with a personal knowledge of foreign princes and potentates, all which it is urged may make it fitting that the Sovereign should guide rather than follow. But whilst it is true that this influence must be weighty, it must be repeated that this cannot affect the reality of the constitutional maxim. The Minister may follow the suggestion of the Sovereign, but only by making it his own. However august the authority with which it is clothed, it must not be ranked higher than the advice that may be taken from some private Nestor to whom the Minister may listen without abating one jot of his own responsibility. Nothing can be allowed to impair the authority of the paramount principle that every act of the State rests upon ministerial advice. It would however be a perversion of this doctrine to infer that, because a Minister must advise and be responsible for his advice, he may act without consulting his Sovereign, who is invested with the power of rejecting ministerial counsels, provided other Ministers are willing to accept the responsibility of such rejection. Lord Palmerston was dismissed from the Foreign Office in the autumn of 1851 because he acted without submitting his proposed action to the Crown, and though there was perhaps a tendency at that time unduly to subordinate a Minister, the justification of his dismissal was substantially as well as theoretically complete.

Continuity of Policy. Notice must be taken of another doctrine occasionally advanced. It is said that continuity of policy must be observed in the conduct of foreign affairs. As long as this is confined to a protest against an unnecessary extension of the insincerities of parliamentary life, it may be allowed to pass. It not unfrequently happens in domestic affairs that a strenuous battle is fought over something comparatively insignificant, and a change of ministry brings about a change in the form rather than in the substance of policy. It is certainly undesirable that our relations with foreign powers should be affected by such barren controversies; but there are real and substantial issues of foreign policy which necessitate a discontinuity of method whenever the nation determines on a change. Such new departures have happened in the past and must happen again whenever the expression of the national will requires a substantial change in the course of foreign policy. The claim to continuity as sometimes advanced is an attempt to set up a bureaucratic independence destructive of the root principle of parliamentary government.

The Foreign Office has two branches, more or less distinct, for home and diplomatic service, though men occasionally pass from one to the other. Each Foreign Secretary has a list of candidates made up of persons recommended to him in a manner presumably satisfactory; and when vacancies occur he selects from his list about three times as many candidates as there are vacancies to be filled, and a competitive examination is held of the selected candidates. The successful youths pass with little or no further experience to the lowest posts abroad, and out of recruits so obtained Secretaries of Legations, Ministers and Ambassadors are duly evolved.

There exists also a large staff of Consuls and Vice-Consuls scattered over the world in the ports and places frequented by the subjects of the Crown. Their primary duty is to facilitate the transaction of business by these subjects abroad, and the Vice-consuls are commonly foreign subjects them-

selves, who from character and station are qualified to give the assistance required. The Consuls (chosen by favour of the Foreign Secretary) are almost universally British, and are sometimes moved from place to place by way of promotion. In some rare cases a Consul-General or Consular Agent is found who is really a diplomat and, it may be, as in Egypt, a diplomat of great responsibility. His subordinate title indicates that the potentate in whose territory he resides is not, or has not always been, a Sovereign Prince.

Special Embassies. In addition to what may be called the normal diplomatic organisation of the United Kingdom, other agencies are called into existence on special occasions. The negotiation of a treaty touching some matter of supreme importance is often effected under the headship of some special Ambassador-extraordinary accredited for the purpose. This is naturally the case when the treaty is between this country and more than one foreign power, such as commonly happens at the close of some great war or in the development of some extended international agreement. In this last connection Conferences or Congresses are frequently called together to draw up a European or International Pact. The series of treaties governing the relations of the great European Powers towards Turkey are of this character; as are also the treaties under which the greater Powers have under different conditions extended their guarantees to some minor states. In the making of all these treaties, whether at Vienna or Paris, Berlin or the Hague, special Ambassadors have been sent to represent the United Kingdom, and the Foreign Secretary himself has been often so deputed, or even, as in the case of the Congress of Berlin, the Prime Minister and the Foreign Secretary have been jointly charged with this transcendent duty.

Secret Treaties—are they binding? The references in the last paragraph recall a question of considerable importance. All the treaties named were in due time published for the information of the country; but, being made under the advice of responsible Ministers by the royal

prerogative, they have not commonly required the express assent of Parliament, since they contained no obligation the immediate fulfilment of which demanded the concurrence of Parliament. It is not the less true that a treaty so made and published is as binding upon the nation as any treaty can be, and the obligation to fulfil it is no less valid than it would have been had it been formally approved by the nation in Parliament. The question arises how far such a treaty would be binding if it were not published. Secret treaties were made in former centuries to which the Kings of Great Britain and Ireland were parties; and in our time treaties have been concluded between Foreign Powers. It is not known that any secret treaty has been thus made in this century by the British Crown; but could such a thing have happened as the making and ratifying of a formal treaty without communicating it to Parliament, it must be held most doubtful whether it would bind the nation, which might assert its freedom to accept or repudiate its proposed obligations whenever they should be made public. It seems contrary to the fundamental principles of a parliamentary constitution that a nation should be bound by obligations, upon the policy or impolicy of which its representatives have had no power of pronouncing an opinion, since they have been kept in absolute ignorance of their existence.

CHAPTER IX

Royal Commissions, etc.

Function of Royal Commissions. Public questions may be debated by isolated thinkers or by the newspaper press, and in due course may become the objects of attention of special associations formed for the purpose; but it frequently happens that the time arrives when something more exact, more precise, and more authoritative is wanted than can be evolved through these comparatively irresponsible agencies.

The matter may require a large knowledge of the details of existing business, or a power of severe analysis and reasoning not always the attribute of public life, or a collision of judgments approaching it from different quarters and holding as yet unreconciled views. In the solution of such difficulties recourse is had to a mixed body charged with the examination of the subject referred to them and the formation of conclusions relative to it. Such bodies are Committees or Commissions, and their services have often proved of the greatest public advantage. They must be distinguished from Committees, whether separate or joint, of the two branches of the legislature, to which reference has been already made, and which are generally appointed at later stages of an enquiry, or in cases where it is not thought necessary to resort to such bodies as are now in question. Extra-parliamentary examination may be conducted by a Departmental Committee, or by a Royal Commission. The former is inferior in dignity and authority, and is usually chosen to consider something of departmental or secondary importance. A Departmental Committee will ordinarily consist of some person or persons from the department in relation to which the enquiry arises, associated with other persons representing the interest or trade or combinations primarily affected, and with other persons—some of parliamentary position—recognised as possessing special knowledge or capacity or independence of judgment fitting them for the service. It is appointed under a minute of a Minister desiring its assistance.

Their Composition and Powers. A Royal Commission, as its name imports, is nominated by a commission from the Crown. It generally consists of parliamentary, official, and outside persons who from experience, training, general knowledge and character may be classed as experts in relation to the subject-matter of enquiry. Both Committees and Commissions conduct their work in the same way, and have the same powers. They cannot compel witnesses to attend or to give evidence when they do attend. Still less have they power to administer an oath. The cases

however of reluctance to give evidence are rare, and may be said to be found only on the part of bodies who apprehend their privileges are about to be attacked. It is within the discretion of the Commissioners whether evidence should be taken in public or in private, or again whether counsel should be allowed to be present as representing any interest concerned and to take part in the proceedings whether by examination or cross-examination of witnesses. In the great majority of cases sittings are held in private, and, even when they are public, professional assistance is rarely suggested and still more rarely allowed.

Report. After the reception of evidence has been completed, the Commissioners deliberate and draw up their report, and if they are not agreed, reports may be presented by a majority and by a minority. Even when one report has been agreed upon, qualifying remarks may be appended by single commissioners or by groups of commissioners. The report or reports with the minutes of evidence received are submitted to the Crown or Minister as the case may be, and are usually printed and circulated for the information of Parliament and the country. A report is not unusually a preparation for legislation upon the lines suggested by it, sometimes wholly in conformity with its recommendations. Illustrations of this work have now long abounded, but perhaps none can be found more remarkable than that of the Poor Law Commission of 1832, the result of whose labours was the absolute transformation in 1834 of the principles and methods of the relief of the poor throughout England and Wales.

Standing Commissions. In addition to Commissions such as have been described, Parliament is sometimes assisted by others where what is wanted is an authority that can be trusted in relation to matters about which the mind of Parliament is clear, but its own knowledge and capacity are recognised as limited. Bills for the amendment of special branches of the law, such as the conveyance of real property, have thus been drawn up by experts, and accepted by

Parliament, on what has proved to be a well-founded faith in their guidance. Another Standing Commission has existed for many years for the purpose of clearing the Statute Book of obsolete and spent enactments, and though its recommendations are formally referred to a Joint-Committee of both Houses for examination before they are adopted, they are in fact approved on the authority of the Commission.

PART III

THE EMPIRE

CHAPTER I

Ancient Crown Possessions

The Channel Islands belonged to William the Conqueror as part of the Duchy of Normandy, and they have always occupied a peculiar position as dependent upon the Crown rather than upon Parliament. Such authority as Parliament has obtained is exercised through the Crown behind which it stands. In the islands themselves parliamentary government has been very slightly developed. Responsible Ministers are not to be found within them.

Jersey has a legislature, but its work is rather that of registering than of making laws. It consists of the members of the Royal Court and of twenty-four other members, and the whole assembly is called the States. The Royal Court, which is the High Court of Judicature, consists of the Bailiff appointed by the Crown and of twelve jurats elected for life by the ratepayers, one for each parish. The Bailiff is, under the Lieutenant-Governor, the head of the Executive. The remaining members of the States are the rectors of the twelve parishes and the constable for each parish elected by its chief property holders.

When an Act affecting Jersey is passed by the Imperial Parliament, it is communicated by the Home Secretary as Minister of the Crown for registration by the Royal Court; but the Crown in Council can by order apply any Act to Jersey and can even make an independent Order in Council

affecting the island to be transmitted for registration.[1] The States can also pass statutes for submission to and adoption by the Crown in Council, which indeed, unless expressly disallowed, are valid for a period of three years even without such submission and adoption.

The Common law of the island is the old feudal law of Normandy, and each parish has its court, presided over by its constable. The election by the islanders of the constables and the jurats who administer justice, qualifies what would otherwise appear to be an irresponsible government. The revenues of the island, derived from greater tithes, feudal dues, rents and tolls, and a few Customs duties, suffice to meet the ordinary charges of administration, so that no difficulties are provoked by resort to taxation. The cost of the military force is borne by the United Kingdom.

Guernsey. The constitution of Guernsey is fundamentally much the same as that of Jersey, but the jurats composing the "Chefs Plaids," corresponding to the Royal Court, are not elected directly by the ratepayers, but by process of double election. The persons associated with them in making up the legislative States are also indirectly elected and are no more than fifteen in number. The "Chefs Plaids," unlike the Royal Court of Jersey, have a power of making by-laws or "Ordonnances" of themselves, and they submit to the members associated with them other projects of law, and, within defined limits, of taxation, which on being approved by the latter are again submitted to the Crown in Council. There is thus even less direct popular representation in Guernsey than in Jersey, and the power of law-making is more restricted. The basis of the Common Law is the same throughout the Channel Islands, and the judicature in Guernsey is also the same as that of Jersey, although it is somewhat differently divided into particular chambers.

The Isle of Man. Until 1765 the Isle of Man was governed without interference from England by the feudal

[1] It is laid down that such Acts and Orders are operative in Jersey, even without registration

lord who held it as a fief of the English Crown. In that year he surrendered the greater part of his rights by way of sale to the King, and they were transferred in 1825. The Lords of Man exercised an unqualified right of imposing Customs duties, which had in fact been so moderate as to make the island a smuggling depôt to the injury of the British revenue—a circumstance which furnished a motive for its acquisition by purchase. As the right to impose these duties passed to the Crown it became vested in Parliament, though it has not been used without remonstrances and protests on the part of the islanders.

Settlement of Revenue. These remonstrances have had their influence in the settlement which now prevails, under which alterations of duties are in fact mutually agreed upon, the Manx Legislature having been of late invited to take the initiative. Under this settlement the cost of the government of the island is made a first charge on the Customs revenue, and it will be seen that the islanders have some voice in determining this cost. Sundry charges for definite public works follow, and then comes the payment of £10,000 to the Imperial Exchequer, and any balance remaining after this payment must be applied to the benefit of the island. The sum of £10,000 historically represents the net revenue enjoyed by the Lords of Man; but it must rather be defended as a contribution on the part of the island to the cost of the Imperial protection. The income from Customs duties forms practically the bulk of the public revenue of the island, and the fact that these duties have always been settled by superior authority has markedly influenced the constitutional development of the island.

Court of Tynwald. A democratic leaven has however made its way in "Man." Under its feudal organisation laws seem to have been made by the Lord, though they were registered and promulgated in the Tynwald or some branch of it—an ancient body with judicial rather than legislative functions. The Lord's right to make laws naturally passed to Parliament, and is still vested in it; but, though never

renounced, it is not now directly exercised save in respect of Customs duties, harbour dues and like matters. The Tynwald has been transformed into a local Parliament, and laws are practically made by it; though before being finally promulgated by this body they receive the assent of the Crown in Council. The actual government is vested in a Lieutenant-Governor appointed by the Crown. The Tynwald consists of two branches. In the first or Council the Governor himself sits, and the other members are the Bishop, two Deemsters or Judges, the Archdeacon, and four other officials. The second branch of the Tynwald or House of Keys consists of twenty-four members elected by the constituencies of the island. Bills can be introduced into either branch of the legislature, but as a rule they originate in the Council as Government proposals. A Bill as passed by both branches is transmitted to the Home Secretary, and after approval by the Crown in Council is promulgated at an open-air meeting of the Tynwald annually held with every traditional solemnity on July 5. For certain purposes, such as the first stage of "private bills" and the discussion of all financial proposals, the Council and the House of Keys sit together as the Tynwald Court.

No Ministerial Responsibility. It will be seen that nothing resembling the principle of ministerial responsibility exists in the Isle of Man. The Parliament of the United Kingdom regulates its Customs tariff and thus lays the foundation of its financial administration. No expenditure can be incurred except on the initiation of the Governor who is the nominee of the Crown, and almost all the legislation of the island originates with him and his legal adviser. He has moreover a relatively extensive and irresponsible exercise of patronage. The general effect of the government is in many respects similar to that which is found in the Colonies, to which we shall presently refer as Crown Colonies; but its organisation differs from that of most, if not all, in the existence of a second Chamber which is purely representative and elective.

CHAPTER II

Chartered Companies and Protectorates

Diversity of the Empire. The Channel Islands as part of the Duchy of Normandy was brought into connection with the Crown of England by the Conquest, but the great mass of the external possessions of the Crown has been acquired (1) by conquest, (2) by settlement and colonisation of British subjects, (3) by the gradual acquisition of territorial right by companies chartered by the Crown primarily for the purposes of trading, and (4) by the development of protectorates assumed over semi-civilised or uncivilised races or conceded by their chiefs and formally recognised by treaty or admitted by silent consent of foreign powers. The character of the political relations by which these numerous territories are bound to the United Kingdom varies even more widely than the mode in which they have been acquired. To begin with, there are some territories commonly considered as part of the British Empire in regard to which, strictly speaking, the Crown possesses no sovereignty whatever either direct or indirect, but merely exercises more or less political influence by virtue of treaties with other powers. In other cases the sovereign power has been delegated by the Crown to a chartered company whose agents administer the government. In those territories again over which the Crown has acquired a protectorate, a portion of the sovereignty, varying considerably in amount from one case to another, is left in the hands of the rulers found in possession. Finally, there are the British possessions more properly so called which are directly administered by Crown officials under the direction of the Colonial, Foreign or India Office, or enjoy self-government under constitutions created by the Imperial Parliament. This last class, which embraces a great diversity of constitutional forms, will be dealt with in the three following chapters. A few words may here be said as to those territories whose

connection with the British Empire rests upon less complete forms of sovereignty, or upon diplomatic engagements which do not constitute sovereignty.

Spheres of Influence belong to the latter of these two classes. When a Power, by virtue of an agreement with one or more of the other Powers interested, includes a given territory within the sphere of influence, the claim implied is mainly a negative one—the exclusion of other Powers from exercising political authority—and the degree of international recognition by which such a claim is supported must very often be a matter open to considerable doubt. This is illustrated by the fluctuations of international opinion with regard to the influence which the several great Powers claim to exercise in China. On the other hand, the large spheres of influence assigned to the various European Powers in Africa by mutual arrangements during the last twenty years have already, in most cases, been covered by the looser forms of sovereignty about to be dealt with.

Chartered Companies had played a very large part in the earlier commercial expansion of many European nations; but the commercial monopoly which was the original motive of their activity having been gradually abolished, the political powers which they had exercised had been resumed by the States that had conferred them. Of late years the method has been revived, though on somewhat different lines, to meet the needs of a period of expansion more consciously political in its character. The grant of a charter to a company of private individuals as a means of realising control over new territory is defended on the grounds that (1) white adventurers will in any case swarm over the frontier of settled colonies; (2) such adventurers when isolated are restrained by no sense of responsibility, and are too few and scattered to form an administration of their own; (3) any attempt of the Imperial or Colonial Government to organise an administration would be very costly and yet apt to break down for want of competent officers; and lastly, (4) delegation of powers of government to a chartered company, though not

free from peril of abuse, fastens upon a definite number of known persons responsibilities which they cannot ignore.

The British North Borneo Company, founded in 1881, was the first experiment in this direction, and it was followed by the Royal Niger Company in 1886, the British East Africa Company in 1888, and the South Africa Company in 1889. The Niger Company reduced a considerable region to order under its administration, and developed a trade returning a moderate rate of profit on the capital appropriated to that part of its enterprise. In 1899 the pioneering work of the Company was regarded as completed, and its powers of government were withdrawn. Compensation was made to it for the expenditure which it had incurred in bringing the country under a settled administration, and it was left to carry on its trade without any special privileges. The territories under the control of the East Africa Company had been turned over to the British Government upon similar conditions after a much shorter period of the Company's administration in 1894. The North Borneo Company continues in full exercise of the sovereignty which it had acquired by agreement with native rulers, subject only to the limitations expressed in the original charter granted by the British Government. The similar powers granted to the South Africa Company have, however, been modified by the introduction of a resident commissioner to supervise the Company's action on behalf of the Crown, and by the establishment of an elementary consultative assembly elected by white colonists.

Protectorates of one kind or another constitute a considerable portion of the area of the British Empire, including about one-third of India and over two million square miles of Africa, exclusive of Egypt. Apart from the full control of external relations which is undertaken in every case, the nature and the extent of the sovereignty assumed by the Imperial authority naturally varies according to the stage of civilisation attained by the protected population and the fitness of the existing Government to meet its needs and the degree

of interference which seems expedient. A broad distinction may be made between a protectorate assumed over a territory already governed by a single ruler, and a protectorate which embraces within a single territory a population ruled by a number of petty chiefs and not held together in any political unity other than that supplied by the Imperial administration. To the former class belong the important native states incorporated within the Indian Empire, the federated states in the Malay peninsula, and the sultanates of Brunei in Borneo and of Zanzibar. The latter class includes the protectorates which administer the affairs of the Pacific Islands and of the immense newly-acquired territories of East Africa, Nigeria and Uganda. The oversight of the protectorates, apart from the Indian States, is divided between the Foreign and the Colonial Offices, the Foreign Office controlling those of East and Central Africa and the Colonial Office those of West and South Africa and also the Malay and Borneo protectorates.

Egypt. The relation of Egypt to the British Crown is peculiar, and cannot be absolutely placed under any of the preceding heads. Egypt remains part of the Ottoman dominions, but the Khediviat is now hereditary in the family of Mehemet Ali, and the right of the Sultan of Turkey beyond that of receiving fixed yearly tribute is shadowy and vague. Like the rest of the Ottoman Empire Egypt was subjected to conventions giving the European Powers special rights of protection over their subjects. These have now been reduced by treaty to the maintenance of international courts, absorbing the separate jurisdictions formerly exercised by the Consuls of the Powers. Finally, the intervention of the British forces in 1882 for the repression of internal disorder and even war, and subsequent occupation though in reduced force, gave the British representative a directing power over the domestic administration amounting to a protectorate which has since been strengthened by the re-conquest under British command of the Soudan; and this protectorate, in which most of the European Powers acquiesced from the

beginning, has been tardily recognised by France in the treaty of 1904. Great Britain thus "protects" an Egyptian native administration subject to the privileges of the international courts and the indefinite remnant of Ottoman sovereignty.

CHAPTER III

India

The East India Company. The history of the East India Company lies outside the scope of this book. It originated in a charter granted in the last year of Elizabeth incorporating certain merchants, and giving them exclusive powers of trade, administration, and settlement in the East. This Company, at first started in opposition to the Dutch East India Company, and subsequently struggling fiercely with French competitors for ascendency, continually grew in power. Before the seventeenth century had elapsed it had secured the three main positions of Fort St. George in Madras, the island of Bombay, and Fort William in Bengal; and before the end of the eighteenth century it had practically ousted all European rivals from Hindustan. It carried on trade. At first the agent, it became the master of princes. It fought and conquered with an army and navy of its own, and auxiliary forces borrowed from the Crown. It established a network of collectors with multifarious functions, many of whom, far removed from home control, launched boldly into enterprise relying on the principle that if their action were successful it would be approved. The original charter granted for fifteen years had been subsequently prolonged indefinitely subject to a power of revocation under which it had been from time to time modified; and as the eighteenth century advanced to a close, it became more and more apparent that the adminis-

tration of such great and far-reaching functions by a Company whose primary duty was to secure good dividends for the shareholders must be radically revised. Mr. Pitt's Act, which was passed in 1784, whilst it left to the Company all its trading privileges and its vast subordinate patronage, placed the civil and military control of its possessions under the orders of the Crown. The appointment of its highest functionaries remained indeed in the hands of the Directors, though subject to the consent of the Crown, which could at any time be withdrawn. This Act created a Board of Control, the President of which became in reality the Minister for India. His associates on the Board being Ministers with other engrossing duties were never called upon to take any part in his action. Under this somewhat anomalous constitution British India continually advanced. Its frontiers extended under successive Governors-General. The authority of native princes was reduced where it was not extinguished, and the policy became more and more favoured of superseding them altogether by direct British rule. At the same time the extension of the frontier was an extension of the area of peace. Within it the worst native customs were gradually abolished, and the organisation of the British administration, judicial and executive, so improved that justice was everywhere secured and the suspicion of corruption disappeared. The Directors established a college at Haileybury for the education of their civil servants before sending them to their posts, and one of their last acts was to renounce altogether the patronage of appointing these civil servants by throwing their posts open to competitive examination. The Company had already, upon one of the periodical renewals of its charter in 1833, been deprived of its last exclusive privilege of trade, and it remained a body with great and stately traditions of authority, but with a power gradually reduced to that of patronage. In 1857 occurred the Great Mutiny, and this produced the final change transferring the whole administration of India directly to the Crown. This was consummated by the Act of 1858.

The Government of India remains to-day practically as it was organised under this Act. On the 1st January 1877 a proclamation at a Durbar or a gathering of native princes announced that the Queen had assumed the title of Empress of India, but declared that this made no change in the standing policy of governing India so as to promote the welfare of its inhabitants. The assumption was, in fact, a mere change of title leaving the real course of administration undisturbed. The powers conferred upon the Secretary of State for India and his Council by the Act of 1858 have been already enumerated. In India itself the supreme authority is vested in a Governor-General who is assisted by an Executive Council of seven members (the usual term of the Governor-General and of each member being five years), one of whom, the law member, is commonly, whilst another, the finance member, is generally, appointed from home; and the rest, with the exception of the Commander-in-Chief, and the military member, are civil servants, who have become heads of departments. The Governor-General, who at least at the commencement of his term is the express depository of the policy of the Government at home, generally dominates his Executive Council, though power is reserved for any one to record his dissent from any act of administration in a minute which must be sent by the Governor-General to the Secretary of State. Next to the Executive must be named the Legislative Council composed, as in Crown Colonies, of official and non-official members, the former being the members of the Executive Council, whilst the latter consist of natives of high rank and Europeans of commercial importance. Some non-official members are selected by the Viceroy and others recommended by provincial and other bodies so as to enjoy some representative character; but no member is elected and all require the Viceroy's approval. The non-official may exceed the number of the official members, so that in theory the latter might be outvoted. In practice this never happens, for, in truth, it is rare that an indocile member appears among the nominated non-

officials. No law can be passed nor tax imposed without the assent of the Legislative Council, but with respect to many matters of the highest importance its members have no initiative power; no question can be put if permission is refused, nor in the absence of any change of taxation is any vote taken in the annual Budget. A law passed by the Council and approved by the Viceroy might yet be set aside by the Secretary of State; but inasmuch as the Viceroy practically controls legislation at every stage, and is moreover in constant communication with the Secretary of State whose organ he is, the disallowance of a statute is impossible without a change of Government. It could happen only if the House of Commons passed an address for its disallowance, which would in fact be a vote of censure on the Secretary of State.

Underneath the Viceroy and his Council India is parcelled out into the Presidencies of Madras and Bombay; the Lieutenant-Governorships of Bengal, Eastern Bengal and Assam, the United Provinces of Agra and Oudh, Punjab and Burma; the Central Provinces under a Chief Commissioner, and the North-West Frontier Province under an Agent to the Governor-General; and a large number of Protected States left under native administration. "Residents" are attached to the chief States, and the rest are grouped under "Political Agents," the influence of such officers varying from extreme control to moderate suggestions of advice. Bombay and Madras are under Governors usually sent from home, and they have associated with them Executive and Legislative Councils for local purposes organised on the same principles as those of the Viceroy. Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and Burma have also Legislative Councils, and it may be added that the cities of Calcutta, Madras, and Bombay have municipalities containing elected elements. Bengal, Madras, Bombay, the United Provinces, and the Punjab have separate judicial organisations; some members of the High Court in each of the first four being trained lawyers appointed from England, with whom are associated a member who has risen from the Civil Service, and

lawyers, native and European, distinguished by their practice in the courts. A crowd of inferior courts occupies the country.

Civil Service and Army. The methods of supplying the higher civil servants of India established by the Court of Directors in their last years has been continued under the direct administration of the Crown. The young men who succeed in the competitive examinations at home, among whom some few natives are generally found, are assigned on their arrival in India to different posts of local administration, such as assistant-collectorships of revenue, from which they rise to collectorships, to magisterial appointments and judgeships of local courts, to commissionerships, lieutenant-governorships, and membership of the High Courts of Judicature or of Executive Councils, as has been already mentioned. It is a hierarchy, entrance into which is the result of examination, and promotion in which depends upon recognition from grade to grade by those above, ending in recognition of fitness for the highest offices by the Secretary of State. The pay and pension of these officers is secured on good behaviour, and they constitute what, by tradition of the original indentures of appointment by the Company, is known as the "Covenanted Service." To special services now much localised and largely supplied by natives separate appointments are made, and it still happens that some who have gone to serve as officers in the Indian Army are diverted to civil employment, and so remain permanently occupied. The army in India is composed of one-third of British troops, paid for by the Indian Government, and two-thirds of native troops, and, as it has been already noted that no charge can be imposed on the revenue of India for expeditions outside it except under the authority of both Houses of Parliament, it follows that Indian troops cannot without such a vote be employed out of India at Indian expense.

The revenue of India. A word must be said about the revenue of India. Custom duties are few, and till recently were free from any element of "Protection."

There is a revenue from stamps, and an excise tax on liquors and another on salt; and a considerable though diminishing amount is annually realised by the profits of monopolised cultivation of opium. The largest item of revenue is however due to rent. In a great part of India the principle prevails that land is the property of the State, and that the rent which in the West goes to a private owner should go in the East into the State coffers. Under Mogul princes an intermediate class existed (zemindar) which paid variable rents to the Emperor or his deputy, and received in turn variable rents from the ryots or actual peasant cultivators. Whether zemindars were proprietors or mere collectors is disputed, but Lord Cornwallis a century ago permanently fixed in Bengal the rents paid by this class to the State, with a view of creating an independent middle-class in that province.[1] The rent revenue in Bengal is therefore fixed. Elsewhere it has remained variable, but it is in fact assessed for different terms, generally about thirty years, by civil servants called Settlement Officers to whom the duty is assigned. These men pervade their respective areas summoning before them the headmen, officers, and peasants of the several villages, and determining as the result of this inquisition the rent to be paid for another term. The task is one requiring great discretion, as it is obvious that any revision of a local inquiry must be extremely difficult; but it may be presumed that their work is generally fairly done, as complaints—at least of harshness or injustice on the part of individual officers—are very rarely heard.

Paternal Government. The position of the State as landlord enforces duties which must in any case have been admitted, having regard to the other circumstances of India. The great peril of the country is an insufficient supply or distribution of water, and large irrigation works (tanks, canals, etc.) have long been the care of Indian rulers.

[1] He left unsettled the rents to be paid by the ryots to the zemindars, and it has been part of the legislative labour of the last generation to protect the Bengal ryot by some regulation of his rental.

Much has been done to extend the system of irrigation throughout the peninsula, but the great work of the British Government during the last half-century has been the construction of railroads. Trunk and branch lines have been made in all directions, partly for purposes of military organisation, but on a still greater scale for the promotion by easy transport of industry and commerce; and partly again to overcome the famine consequences of partial or even extensive droughts by the establishment of facilities for moving supplies of food into distressed districts. The Government, in these as in so many other matters, occupies a kind of paternal position toward the great mass of the population; but, at the same time, the education and ideas of European culture are permeating what may be called the professional classes of India; and a way has yet to be found of reconciling the desire thus begotten to be associated with the government of the country with that condition of untrained submissiveness which characterises the bulk of the inhabitants of India.

Native aspirations. Natives find employment in commerce and in the courts of law. They attend University classes and obtain degrees. They enter the professions. They fill subordinate posts in the Civil Service. They may as successful candidates in competitive examinations be found in the Covenanted Service. They sit on the bench in the High Courts. Whilst thus discharging a multiplicity of functions of various grades of importance in British India proper, they see in the Protected States an administration entirely in the hands of fellow-Indians, though more or less controlled by English Residents. It is not surprising that aspiration should exist for a larger and more independent share in the government of India, and these aspirations have found vent in self-constituted national Congresses, which have met annually to discuss Indian affairs and to pass resolutions in favour of changes tending towards representative institutions. The authority of these Congresses has been questioned and their experience has been chequered, but their existence

is not resented by those who are seriously occupied with the problem of the government of India. Before the Mutiny annexation and absorption under direct British administration was the policy of Lord Dalhousie. More lately the desire to foster and strengthen the existence of Native States has been developed, but it cannot be said that a definite end is discernible as the goal of either course. Tentative steps may be expected in the direction of decentralisation, in experiments in representative co-operation, and generally in extending the sphere of responsible association of natives and Europeans in Indian government, but there is no immediate prospect of any great change of that remarkable system under which public opinion as expressed through the Imperial Parliament, under checks and limitations devised with its assent and existing by its permission, overrules the bureaucratic government of the great Indian peninsula.

Parliamentary control. India is under the immediate administration of the Governor-General and his Council, but these are appointed at home, and if the Governor-General felt disposed to differ from the policy of the Secretary of State (which has very rarely happened) he must yield up his private opinion or resign. The Secretary of State again is a member of the Cabinet which must possess the confidence of Parliament, especially of the House of Commons. It has nevertheless been part of the overruling mind which has shaped the organisation of Indian government to make it not too responsive to the varying temper of the House of Commons. In the end the national will must have its way here as elsewhere; but checks and obstacles are interposed which, perhaps insensibly, moderate its force. No part of the expense involved in the government of India comes before the House of Commons in Committee of Supply. The salary of the Colonial Secretary is voted by Parliament, and there is thus a possibility of annually reviewing his policy in the full activity of the parliamentary session. The salary of the Indian Secretary of State is paid by India and never comes before the House of Commons. At the

end of the session, generally after the Appropriation Bill has been read a second time, the Indian budget is submitted; and this consists of the review of the financial situation in India followed after a desultory discussion by a resolution simply affirming that the Indian accounts show certain totals of income and of expenditure. It may be doubted whether this does not betray too great a jealousy of the House of Commons. If the salary of the Indian Secretary were submitted like that of the Colonial Secretary to a vote, the opportunity for a real debate would be given which, experience suggests, would be used rather than abused.

CHAPTER IV

Crown Colonies

General Character. The British possessions which still remain to be considered may be divided into two groups: (1) that of the self-governing colonies with representative legislatures and Ministers responsible to them; (2) that of Crown Colonies which are governed directly by the Crown (under the advice, that is, of the responsible Minister, the Secretary of State for the Colonies), acting through some agency the details of which vary from colony to colony. A large number—the largest number—of these Crown Colonies lie within or near the Tropics, and are inhabited by masses of natives of different races from our own with a sprinkling of persons of British origin. In the majority of cases these latter have come for a few years of energetic strength to superintend local trades and industries without any intention of remaining, still less of leaving their families to succeed them, but in a few instances, notably in the West Indian islands, British immigrants remained and have left descendants through several generations. The difficulty of erecting

representative institutions where the British element in the population, whether temporary or permanent, is but a handful is obvious. Other cases of Crown Colonies such as those to be immediately noticed are really military stations where representative institutions are equally inapplicable, though for different reasons.

Gibraltar. Gibraltar is the first of the colonies to which reference has just been made. Its Governor, who is also the Commander of the troops stationed there, is the Government in himself. He is the head of every branch of the administration, and he makes ordinances which are laws. It is a great military station and a calling-place for ships trading to the Mediterranean and the East, and it has no other interests and no other population than such as these two facts would suggest. Any other inhabitants beside the military forces and those who live by supplying the wants of passing ships are those who, stimulated by the fact that Gibraltar is a free port, make it a station for a smuggling trade into Spain. The government of such a population is not difficult, especially in view of its easy communications with England; and in fact no more serious question ever arises than some dispute over the policy of a police or sanitary regulation.

Malta is a station different from Gibraltar in having a fairly large independent population, of a very mixed breed in the rural districts, where their tongue, a bastard Arabic, attests the mixture; and of Italians speaking Italian in the towns. The inhabitants however, apart from the British military forces and some Jews and Greeks who have come there for trading purposes, are united in their Catholic character with a completely organised hierarchy; whilst a curious order of nobility largely of papal origin is found among the laymen of the professional and landowning classes. The Governor, the head of the military forces as at Gibraltar, has an Executive Council composed of his chief officials, and a Legislative Council, partly of nominated official and partly of elected members. The latter if united can easily outvote the former, but the King in Council can exercise

reserve powers, issuing an Order which has the force of law in the island, and by this means the action of the representative council may be and in fact has been completely overridden. The disputes which have arisen have mainly turned on matters of education, marriage, etc., where ecclesiastical ideals were in conflict with the predominant principles of British policy; but questions of taxation and the rivalry of the Italian and English languages have lately led to disputes of some bitterness.

Cyprus is a third illustration of a Crown Colony which was intended, when first taken, to be constituted a military station like Gibraltar and Malta; but this design was never fulfilled, and may be described as set aside, though not perhaps as permanently abandoned. It differs from other possessions in being held under a kind of terminable lease from the Sultan of Turkey; but it may be assumed that the Sultan will never be allowed to resume possession of it. There is however a rental attached to the lease of more than £90,000 a year; that amount being taken at the time when the lease was agreed upon as the average tribute paid by the Cypriotes to the Sultan. It is only in very prosperous years that such a tax can be raised in the island in excess of necessary expenditure; and the payment of the tribute has involved frequent subvention from the British Treasury amounting on an average to one-third of the total. The political problem involved in the government of Cyprus is that of inducing peace if not co-operation between Moslems and Christians, Turks and Greeks. The Governor is assisted by an Executive Council composed of his chief officials, and there is also a consultative Assembly of eighteen members in which representation of the two populations of the island is secured by allowing the Christians to elect nine members and the Mahommedans three, the remaining six being official, an arrangement under which the official members in combination with the Mohammedan representatives can check any tendency to injustice on the part of the majority.

West African Colonies. The Crown Colonies of

Europe are military stations. Those of the West Coast of Africa are trade stations under the control of Governors assisted by Executive Councils without any suggestion of representative institutions, which indeed the circumstances of the territories make impossible. Most of these settlements were originally made in the interests of the slave-trade, and after the abolition of that traffic their commerce was so unsatisfactory and their development so unpromising that little more than thirty years ago a strong Committee of the House of Commons unanimously recommended their abandonment. Different views have of late prevailed, and vast possibilities are promised of commerce with the interior; but the political organisation of the coast stations remains unchanged.

Ceylon as a Type. Another class of Crown Colonies consists of countries fully peopled with native races wholly occupied in the pursuits of industry and commerce, and so far possibly attaining a high degree of civilisation; but from differences of race or character not recognised as qualified to co-operate, except perhaps in subordinate capacities, in the functions of government. Of these, Ceylon is the largest; but others are the Mauritius, Hong Kong, Straits Settlements, Fiji, Demerara (British Guiana) and the West Indies; though Mauritius, Demerara and the West Indies may be differentiated from the others as possessing a limited white population resident from generation to generation. The presence of this white element in the population has in so far affected the constitutions of these colonies that it is convenient to consider them separately, and to direct attention first to the type of which Ceylon is the most important example. In this class a Governor appointed by the Crown is assisted by an Executive Council mainly if not wholly consisting of official members, and the will of the Governor and the Council (which latter through the Governor's control of official members is but another expression of his own will) is supreme throughout the colony. A Judiciary is indeed generally found supplying some

elements of independence, and so far exercising, perhaps insensibly, a check upon a power otherwise autocratic. Another check is indeed intended to be furnished by the Legislative Council where it exists, but this is always dominated by the official members, and the others, the nominated members, though chosen to represent important local interests, are generally docile instruments of the Governor's policy. The personality of the Governor is an element of importance in these colonies: much depends on his vigour or supineness; but he is directed in his principal acts by the Secretary of State at home, in whose bureau the records of former Governors are stored and who, subject to his responsibility to Parliament, really governs the colony. White officials are at the head of the several departments of administration. Subordinate appointments are frequently filled by natives, and in Ceylon natives have been advanced to the judicial bench. In the case of Ceylon too, the size of the island makes necessary a numerous civil service; and this is recruited by successful candidates in competitive examinations at home. The general result is an administration, of which the Governor is the managing director, which occupies itself with all that concerns the moral and material well-being of the inhabitants. Special local work may be delegated to local Commissions, constituted for the purpose; but in general, harbours, railways, roads, irrigation, immigration, sanitation and education, are all looked after by the Government. The co-operation of natives may receive further development in the future. It exists at present on a small scale in the organisation of the Civil Service, and in the constitution of the local Commissions to which reference has been made.[1]

The West Indian Type. The colonies Mauritius, Demerara and the West Indian islands, especially Jamaica and Barbados, where there are white populations resident from generation to generation, are Crown Colonies like those already noticed, in that they are governed by a Governor

[1] See *post*, on the Government of India.

with an Executive Council whose authority is supreme, and who is inspired and directed by the Secretary of State. But the Governors were from early times associated with representative institutions which control the making of laws, and sometimes claim to control the taxation of the colonies. Had the latter claim been ever effectually established, responsible government must have followed; but the executive officers of the Governor have always remained independent of these local Assemblies, and when it has been found impossible to overcome the latter by other means, they have been suppressed by the authority of the Imperial Parliament. It must be remembered that, when the several constitutions of the West Indian islands were called into existence in the second half of the seventeenth century, the rights and privileges of the House of Commons were not established as they are to-day, and the representative Assemblies then created remained down to the abolition of negro slavery in 1834 strictly oligarchical in their character. The same limitation of class applied to the peculiar consultative bodies which originated in Demerara when a Dutch possession, and were maintained after it became a British dependency. High property qualifications helped to preserve the predominance of whites after negro enfranchisement, and to this, Demerara, Barbados, and the Bahamas owe the present existence of their several constitutions.

Jamaica has been the most conspicuous example of the breakdown of an original constitution. A serious crisis which occurred in 1838 was surmounted, but the constitution broke down again in 1866, and on this occasion was entirely superseded. In the distraction of that time the representative Assembly consented to its own supersession, and for some sixteen years after Jamaica was governed by a Governor and a nominated Council. Under the colonial administration of Lord Derby a mixed system was established with a Legislative Assembly containing a majority of elected members, but there was no admission of the principle of ministerial responsibility and the actual government remained that of a Crown

Colony. Another period of sixteen years passed in which, despite some minor changes, the system was maintained of Crown government under the direction of the Colonial Office checked by the presence of the majority of elected members in the Assembly. This period closed in financial embarrassment which was perhaps an inevitable result of the economic condition of the island; but the Colonial Government and the elected members in mutual recrimination threw the blame on each other, and in 1899-1900 Mr. Chamberlain resolved to take a new departure and place the nominated members of the Assembly in a majority. The controversy cannot be said to be closed, and the vicissitudes of government in Jamaica remain an illustrative study of the difficulties of a situation where the character of the mass of the population forbids the establishment of thoroughly democratic principles and the determination of authority oscillates between government from at home and government by a privileged and practically racial minority of the inhabitants of the island.

Future of West Indies. The existing political organisation of the rest of the West Indian islands cannot be regarded as permanent any more than that of Jamaica. Circumstances almost accidental have produced great variations among these dependencies of the Crown; but everywhere we find that the real power is vested in the Governor as representative of the Secretary of State, although his authority may apparently be tempered by the existence of Assemblies independent in character. Some movement must be expected throughout the West Indies either to a clearer establishment of the irresponsible authority of the delegate of the Crown, or towards fresh experiments in responsible government. But the grave economic embarrassments of the islands will not at present encourage any tendency in the latter direction, which is already sufficiently restrained by a sense of the predominance in numbers of uneducated masses of black population. The experiences of San Domingo are generally regarded as a warning, but the experiments that may

be expected in the government of Cuba and Puerto Rico may afford some help in the solution of a problem confessedly difficult.

CHAPTER V

Self-Governing Colonies

Self-government in the Colonies. It has been seen how the autocratical character of a Crown colony may be modified by the introduction of a consultative Assembly wholly or partially elected; and it can be easily understood by what processes of gradual and tentative change the transformation is carried on until the colony is endowed with the amplest freedom of responsible government. This has been attained in many colonies; indeed in all those where the population is practically of exclusive European origin. But the result has nowhere been reached all at once. The authority of a local Parliament and the responsibility of Ministers to it have followed intermediate stages, and even when these have been established, certain subjects of legislation and administration have been often reserved from parliamentary control, and only subsequently brought under it. The government of aboriginal inhabitants where they exist in any number has often been thus reserved under the direct care of the Governor acting under the direction of the Secretary of State, and assisted by a department specially organised for the purpose. Such restrictions have sooner or later disappeared and self-governing colonies are, so far as their own areas are concerned, completely emancipated. The Governor as the representative of the Crown has a right of veto, but this may almost be said to have passed into desuetude. He has also the power of reserving his assent to a statute until it has been sent home for the consideration of the Secretary of State; and he is instructed to exercise this

power wherever any proposed legislation appears to extend beyond the limits of the colony or to affect imperial relations. Amendments of the law of marriage were at one time thus reserved, but have not been so treated for a generation.

Supremacy of Imperial Parliament. Every step however in the development of a colony has been made directly or indirectly under the sanction of the Imperial Parliament. The authorisation of its constitution has been affected by an Act of Parliament. Where its provisions have been modified, and where the control from home has been relaxed, such modifications and relaxations have been effected with the express or tacit assent of the Secretary of State acting under his responsibility to the Imperial Parliament. Graver changes, such as the federation of separate colonies, though originating in the colonies themselves, are carried into effect by Imperial Acts. Legally all colonial constitutions derive their origin from Parliament, and live and move with its permission. An Act of Parliament, if so expressed, runs everywhere within the dominions of the Crown; and reference has already been made to the fact that the West Indian constitutions have been suspended and abrogated by Acts of Parliament.

Deference to Colonial Opinion. This supremacy must however be understood as largely limited in fact if not in theory. It is inconceivable that any change should be made by Parliament in the constitution of the Canadian Dominion or in the constitutions of the Australian colonies, except at the express desire of the colonies themselves. The Acts of Parliament which do run everywhere are so passed from considerations of general convenience, and are supported by general concurrence. Recent history rather exhibits the spectacle of the Home Government yielding to colonial wishes than of Colonial Governments yielding to home policy. The Crown is under treaty obligations with the Emperor of China to allow freedom of immigration and of trade to Chinese subjects. But the Australian legislatures have passed Acts,

to which the royal assent has after some demur been given, restricting or even prohibiting the entrance of Chinese within their territories. Natal has a considerable population of Indian coolies, originally immigrant labourers, and now settled and prosperous as agriculturists and tradesmen. Under the laws of Natal these subjects of the Crown would have been *prima facie* entitled to the local franchises; but they have been disabled by statute as persons who would have had no franchise in their country of origin, and the statute has not been disallowed by the Crown.

Fiscal Independence. Every colony has the control of its own tariff, but was formerly bound by the treaties the Crown had made with foreign powers, providing that no discriminating duties should be imposed on the produce of the countries of such powers imported into any part of His Majesty's dominions. Some colonies wished to be relieved from the obligation, and in deference to them the treaties containing it were in 1897 denounced, so that the colonies are enabled to impose differential duties where the United Kingdom is bound to abstain from them. Almost every colony has, in exercising its independence, established tariffs hostile to the United Kingdom as to the rest of the world; and the new power of imposing differential duties has been used by Canada for a reduction of 25 per cent. (since increased to $33\frac{1}{3}$ per cent.) on the duties on commodities from the United Kingdom and from other colonies or countries giving Canada freedom of trade equal to that accorded by the United Kingdom. In other cases the power has been used as a means of negotiating treaties of reciprocity; but in no case has a treaty yet been sanctioned imposing higher duties on the importation of British than foreign goods. Proposals to that effect were agreed upon between delegates from Jamaica and the Government of the United States, but they have not been approved. No formal treaty can be made except by the Crown, and it may be expected that the Home Government will be slow to advise His Majesty to become party to a treaty which would give greater benefits in

one of her colonies to foreign than to British trade; but with the conceptions of fiscal policy which prevail in most of the colonies the difficulty thus suggested may have to receive serious consideration.

Colonial Parliaments. It is not intended to review the details of the constitution of the several self-governing colonies. All of them are so far organised after the home model as to include a Legislature of two Houses[1] together with a Governor representing the Crown, and the main differences between them turn on the composition and authority of the second House. In the Dominion of Canada the Senate, and in New Zealand, Queensland, New South Wales and Natal the Legislative Council, consists of nominated members, originally nominated for life, but in New Zealand recent nominations have been made for terms of seven years, and it is intended that this system should gradually extend to the whole Council. In the other Australasian colonies, and in the Cape Colony the Councils are all elected, sometimes for larger areas, sometimes with a higher qualification on the part of electors and of members than obtain in respect of the Legislative Assemblies, and the Councillor is elected for a fixed term; but provisions are sometimes added for the renewal of the Council by the periodic vacation of seats by a certain proportion of members. Reference has already been made to the struggles that have occurred between Councils and Assemblies on the subject of financial control. These have happened chiefly in Australia, and it cannot be said that they have yet reached a final settlement. On the whole the claims of Assemblies have gained strength with the lapse of time, and the example of the House of Commons furnishes a standard inevitably influencing opinion; but Councils, especially when elected, exercise an authority to which the Lords can make no pretension, and it is not likely that they will be reduced to mere impotence in relation to finance.

[1] Except Quebec and Nova Scotia, the provinces of Canada have now but one Chamber apiece.

Federation of Canada. A new departure of the greatest interest in the constitutional government of the colonies was consummated in Canada in 1867. The North American dominions of the Crown consisted of the self-governing colonies Canada, Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island; of the vast territory under the authority of the Hudson Bay Company, a Chartered Company dating from the times of Charles II.; and of British Columbia, which had then recently passed out of the status of a Crown Colony. Canada proper contained two provinces, Lower and Upper Canada, very dissimilar from one another in character—the first almost wholly French and Catholic, the second mainly of English and Scotch origin and Protestant. The colony was organised on the principle of equal representations of the two provinces, and the result had been for some time a succession of Ministries with very small majorities and feeble in power; whilst the inhabitants of each province resented the ties strictly binding them together. An issue to what threatened to be a deadlock was found in the willingness of Nova Scotia and New Brunswick to be united with the two Canadas as four provinces of one Federated Dominion. After much negotiation between the leaders of parties throughout the four, a scheme of Union was drawn up which, being approved by the Colonial Office, was incorporated in an Act of Parliament of 1867 creating the Dominion of Canada. It may be noted that the question of Federation was not discussed in General Elections throughout the Provinces nor was there anywhere a reference of the proposed union to anything in the nature of a plebiscite; and it was indeed asserted at the time that a majority of the inhabitants of Nova Scotia opposed the project.

Constitution of the Dominion. Under the Act of 1867 a Dominion Parliament was constituted consisting of a House of Commons and a Senate. In the House of Commons, Lower Canada, henceforth called the Province of Quebec, was always to have sixty-five members, whilst the

other Provinces were to be represented by a number of members bearing the same proportion to sixty-five that their population might bear to the population of Quebec, the allotment of members being revised every ten years after the Dominion census was taken. The Act provides for a General Election every five years unless anticipated by an earlier dissolution. The Senate was to consist of seventy-two members nominated as already stated for life, twenty-four each for Quebec and Ontario, and twelve each for Nova Scotia and New Brunswick; and there is a provision also for an increased number of members not exceeding six to facilitate overcoming any possible deadlock. The provinces Quebec, Ontario (the new name for Upper Canada), Nova Scotia, and New Brunswick retained, or were endowed with, local legislatures (in the case of Ontario with a single chamber), and were placed under the administration of Lieutenant-Governors, to be nominated by the Governor-General of the Dominion on the advice of his Ministers; the Governor-General himself being nominated by the Crown. The Act partitioned legislative powers between the Dominion and the Provinces, giving however concurrent powers in relation to some specific subjects, but providing that whatever was not specially assigned to the Provinces should be reserved to the Dominion; and in Dominion and Provinces alike Responsible Government was established. The Provinces were placed under the Dominion much as colonies in general are under the home authority. The Governors-General, for example, have a veto on provincial legislation; and it is now established, though at first doubted, that this veto must be exercised under the advice of their responsible Ministers. The interpretation of the Act lies within the competency of any Canadian Court, when raised in a case coming before it; and appeals from the decisions of such Courts may ultimately be carried to the Judicial Committee of the Privy Council; but there is also a special provision for submitting to this Committee original questions concerning the interpretation of the Act.

Dominion Finance. The Dominion Act gave to the

Dominion Parliament exclusive powers of raising Customs and Excise duties within the Dominion, and as the federated provinces had, whilst independent colonies, largely relied upon these duties for the means of meeting their current expenditure and the charges of their several debts, it became necessary that the Act should contain a financial transaction providing some aid for the provinces in the future. Under it the existing debts were fused into one Dominion debt, and to compensate for the inequalities of the relief thus given and to provide funds in help of provincial expenditures, it was enacted that subvention should be made from the Dominion Treasury to the several provinces, partly of fixed annual payments and partly of an allowance according to population, which latter would also on certain conditions become fixed annual payments. To New Brunswick a special additional subvention was given for a term of ten years. The financial provisions of the Act of 1867 have however been often readjusted, and the admission of every fresh province has involved new financial provisions relative to it. In all these changes the principle of Dominion subvention to provincial treasuries has gained strength.

Growth of the Federation. It remains to notice briefly the new provinces which have been incorporated into the Dominion. The rights of administration and of government of the Hudson Bay Company were acquired by agreement leaving the Company as a trading Corporation, and out of this region the Province of Manitoba was in 1870 created with a legislature of its own, and a representation in the Dominion Parliament, and a special financial arrangement, so that Manitoba should stand on the same footing as the other four provinces of the Dominion. The possessions of the Hudson Bay Company outside Manitoba remained as territory under the direct authority of the Dominion Government, and new provinces are now (1905) about to be carved out of it. In 1871 British Columbia joined the Dominion under conditions similar in character, and this was followed by Prince Edward Island in 1873.

Newfoundland is the only colony in North America now outside the Dominion, and negotiations have several times been commenced with a view to its incorporation, but for special reasons the prospect of its Union with Canada has of late years rather receded than advanced.

Australian Federation. More recently steps have been taken to bring about a federation of the Australian colonies, and these have been carried to a successful conclusion. Originally drafted and re-drafted, corrected, and revised in Australia, it there received parliamentary and plebiscitary sanction in New South Wales, Victoria, South Australia, and Tasmania; and was forwarded home as a scheme for the union of these four older colonies. Queensland however came into the plan before it was ratified by the Imperial Parliament, and the adhesion of Western Australia has also been secured, so that the federation in its final form comprised the whole of Australia. This new constitution differs in many respects from its Canadian predecessor. The separate colonies retain a larger measure of independent existence, although it would be competent for them to become more and more incorporated in, and subordinated to, the Commonwealth, as the union is to be henceforth entitled. Each state will, for example, continue to receive a Governor nominated by the King on the advice of the Imperial Ministers, and the legislation of each State, within the limits of its authority, is not subject to the Government of the Commonwealth. It would seem also that, according to the true reading of the Commonwealth Act, the existing right of appeal from a State High Court direct to the King in Council would exist concurrently with the right of appeal to the Federal High Court until otherwise enacted by the State legislature.[1] The powers of legislation conferred on the Commonwealth Parliament are specifically mentioned, and the State Parliaments enjoy general reservation of powers not transferred. The separate State is thus left in a position

[1] The question of an ultimate appeal to the King in Council through the Federal High Court is not here dealt with.

of independence which has no parallel in the Canadian constitution. The main matters handed over to the Commonwealth Parliament are trade and commerce and the imposition of Customs and Excise duties (so that trade shall be absolutely free throughout the Commonwealth), the currency, banking and railway laws in respect of banks and railways extending beyond the limits of single States, postal services, marriage and divorce, and the organisation of the defensive forces of the Commonwealth.

Constitution of the Commonwealth. The Commonwealth has at its head a Governor-General appointed by the Crown, who acts under the advice of Ministers responsible to the Commonwealth Parliament; and this consists of a Senate in which each State has six members, and a House of Representatives containing approximately twice as many members as the Senate allotted among the States in proportion to their population as shown at each decennial census. The senators are chosen for a term of six years, one-half retiring every third year, and are elected in each State by the electors for the House of Representatives; but in the election of senators each State is treated as one undivided constituency, except perhaps Queensland, where subdivision is possible. The House of Representatives is chosen for three years by the same persons who are voters for the House of Representatives in each separate State. The Legislature of each State may ordain the electoral divisions of the State, until the Parliament of the Commonwealth takes this matter into its own hands; and, in the absence of provision by the Legislature of the State or Commonwealth, the State is to be one constituency for the election of its representatives. Both Senate and House may be simultaneously dissolved. In the division of functions between Senate and House the latter has the initiation of all financial legislation, and the Senate is debarred from amended tax bills, but it is empowered to return such bills to the House with suggestions of amendment submitted for consideration. There are provisions against the abuse of the exclusive powers of the House on matters of finance;—

nothing must be tacked to an Appropriation Bill; Custom duties must be dealt with in a Bill by themselves; Excise duties must be similarly isolated. It is indeed provided that a Tax Bill shall deal with one subject of taxation only, and foreign matter introduced in any taxing bill is of no effect. The prohibition of tacking extraneous enactments to a Finance Bill is but a formal expression of the principle tacitly observed at home, but the severe separation of taxing proposals from one another and the liberty allowed to the Senate of suggesting amendments to Finance Bills are limitations of the unqualified supremacy insisted upon by our own House of Commons.

Financial Settlement. In Australia as in Canada the transfer of Customs and Excise duties to the federated Parliament has necessitated the establishment of financial relations between the Commonwealth and the States. There is no pooling of State debts at the outset; but it is suggested as possible, and meanwhile accounts will be kept of the shares of the revenue of Customs and Excise duties attributable to the consumption of the articles subject to them within each State, and against the credit thus established is debited the share of the cost of Commonwealth government due from each State in proportion to its population, and the balance is paid over to the State. There is no provision in case of a balance against the State, and it appears to be assumed that these indirect taxes will always be maintained high enough to ensure a surplus.

Provision for a deadlock. The Commonwealth constitution contains many transitory provisions which have not been noticed in the foregoing sketch, but there remain two other matters which require to be mentioned. The first is the provision for the solution of a deadlock between the Senate and the House of Representatives. When a measure insisted upon by the House of Representatives has been rejected twice in the same or in two consecutive sessions by the Senate, the Governor-General is empowered to dissolve both Houses simultaneously so that an appeal may be made to the constituencies. If the newly-elected Houses still fail

to come to an agreement the Governor-General may convene a joint sitting, at which an absolute majority of the members of both Houses voting together shall decide the question at issue.

Amendment of the Constitution. The second matter to be noticed is the provision for the amendment of the constitution. Many important clauses in the Commonwealth Act are expressly subjected to alteration by the legislative authority of the Commonwealth Parliament; but the Parliament is not made omnipotent like the Imperial Parliament at home. The machinery for constitutional amendment is elaborate, requiring time and a concurrence of voting forces to set it in effective motion. The amendment must first be passed by both Senate and House, but the Governor-General of the Commonwealth may take up an amendment twice passed by an absolute majority of one House with or without alterations suggested by the other House, and the amendment so taken up by the Governor-General is then dealt with as if it had passed both Houses: that is, it is submitted to a plebiscitary vote of the electors in each State for the House of Representatives. If approved by a majority of States and by a majority of the electors voting throughout the Commonwealth, it returns to the Governor-General for the King's assent.

Appeals to Privy Council. A word must be added on the only subject of controversy that arose in connection with the constitution of the Commonwealth. The Bill as settled in Australia and sent home contained a clause prohibiting appeals to the King in Council on any question involving the interpretation of the constitution of the Commonwealth or of a State unless the public interest of some other part of the King's dominions was involved; and to this solitary provision the Imperial Government objected as touching a matter extending beyond what may be called the domestic interests of Australia. Ultimately the difficulty was settled by the deletion of the provision and the reservation of all rights of appeal to the King in Council, subject to any future legislation on the subject by the Commonwealth

Parliament which must be specially held over, if passed, for the sanction of the Crown. It may be doubted whether the point is of the importance attributed to it in the height of the controversy, and it may be left to the public judgment of the future in Australia and at home.

Further Schemes of Federation. Although the framers of the Commonwealth Bill in some important points copied the precedent of the United States rather that of the Dominion, the success of the Canadian Federation doubtless stimulated their enterprise. A similar situation is attended with similar wants, and gives promise that corresponding advantages will follow legislation of the same character. Freedom of trade between federated colonies in Australia will probably be as beneficial as freedom of trade between the provinces of the Dominion. The movement towards Australian Federation has in any case originated in Australia itself, and the Parliament at Westminster was asked to sanction a Bill which had been worked out after many conferences between Australian statesmen, and was recommended by approving votes either of colonial parliaments or of the electors of the colony taken by way of plebiscite. If Federation is to extend elsewhere it must be amid similar circumstances. In 1877 the Imperial Parliament passed an Act for the Federation of the Queen's Dominions in South Africa. The Colonial Secretary for the time was the same person that held the seals of the Colonial Office when the Canadian Act was introduced and passed in 1867. He seems to have thought that that which had grown in North America might be transplanted to South Africa. The Act became law after much opposition with an amendment limiting its operation to five years, at the end of which it expired without anything having been done or even attempted under its provisions. Some steps have been taken towards another federation in South Africa as the sequel of the war in that continent, but any speculation as to the form it may assume or the time in which it may be consummated would still be premature.

CHAPTER VI

Future Growth of the Constitution

Present Organisation of the Empire. It has appeared that the Government of the United Kingdom is in a very real and direct sense discharged by Ministers advising the Crown, and possessing the confidence and support of Parliament which embodies the national will. An attempt has been made to explain the provisions intended to secure the identity of mind of the nation, of Parliament and of Ministers; and further suggestions have been made as to the influences brought to bear upon the development and manifestations of this identical mind in which power is seen to reside. All this makes up the practical government of the United Kingdom. The same authority, no less really, though apparently with not quite the same directness, rules over the Crown Colonies and Dependencies, including the great Dependency of India. Over the Self-Governing Colonies its authority remains technically supreme; but is in truth much more limited. Each of them is now perfectly free to make laws for its internal government, to impose tariffs, and to negotiate commercial treaties at its discretion, and proposals have even been discussed for differentiating in a hostile manner against the imposts of the United Kingdom. The real overruling authority of the Home Government is in respect of peace or war, since other foreign relations are scarcely controlled; and even in respect of peace or war its authority may be said to have been for a long time dormant since it has made only for peace. Difficulty can scarcely arise except in case of war when it may prove real, and the apprehension of it at the outbreak of the war with the Boer Republics produced the startling suggestion that in that conflict the Cape Colony would be neutral. During years of peace there is no pressure of coercive authority. It is only in a season of war that a colony is subjected to pressure, through restraint on trade, acts of hostility on the part of the

enemy, and the penalties which may befall those who find themselves belligerents. The contributions in men and money that may be asked for, if not levied, form another part of the possible consequences of war. In view however of these contingencies, it must not be forgotten that if the conduct of foreign affairs, upon which issues of peace and war depend, remain in the hands of the Government of the United Kingdom, it is also true that the whole cost of government in its relation to foreign Powers and of the Army and Navy, with a comparatively small deduction, is borne by the Parliament of the United Kingdom. Quite recently Australia and the Cape Colony have undertaken certain naval charges; but the amounts thus contributed, though betokening a spirit that deserves recognition, are in themselves comparatively insignificant.

Motives for Change. The organisation of the Empire described in the last paragraph cannot be regarded as in itself full of the promise of permanence; and it is not unnatural that many persons have been led to study the question of the possibility of improving it. The difficulty revealed but not developed in South Africa might break out in a more serious form elsewhere. The Ministers of the Cape stood alone among Colonial Governments in their attitude of hesitation or of opposition, but in other circumstances the self-governing Dominion of Canada at one time and the Commonwealth of Australia at another, might be found protesting against a war in which the Imperial Government threatened to involve the Empire. Such a contingency may not be probable; but we cannot be certain that the policy of the Government will always command colonial approval, and it is not surprising that many should seek a development that would afford some security of the Imperial unity of purpose under all chances. Many other circumstances have tended to foster a desire for some new form of Imperial organisation. The inquiry has been stimulated in recent years by the success of the federation of the Canadian Provinces. It has been already seen how this federation has grown in British North America, and how

its example has inspired the politicians of Australia to undertake the formation of a Federation of the Australian Colonies. It is asked why the lesson should not be carried further and extend to a Federation of the British Empire. Associations have been formed for the promotion of this great object, but it cannot be said that they have as yet produced any practical result.

The Proposed Zollverein. Some difficulties are obvious. The Canadian Dominion is, and the Australian Commonwealth will be, a Customs and Excise Union. This is comparatively easy in each case, for if the Canadian provinces do not exactly lie within a ring-fence, they are so nearly adjacent that the organisation of a common Customs has not been difficult; and for similar reasons it may be expected to work with ease in Australia. The contiguity of the provinces of the Colonies brings also into clearest light the advantages of destroying all barriers to trade between them. If, however, the mind passes to the conception of a common Customs tariff and common Excise duties for Australia and Canada, we feel at once the difficulties involved in such a proposition. There can be no constant interchange of persons and things between the two units such as prevails between the component parts of each, and whilst the physical conditions of the problem are thus different, there is an added difficulty in conceiving the process by which common duties could be agreed upon and the distribution of the accruing revenue regulated. It has not been found easy to bring Cuba and Puerto Rico, near as they are to the American continent, within the tariff of the United States. The difficulty of organising like duties throughout the whole Empire would scarcely be less than that of establishing a partnership between Australia and Canada. The partial consideration of the case thus given will have suggested another difficulty. The Canadian Dominion is a federation of Provinces each of which already possessed self-government. The same is true of the Australian Commonwealth. Each is an example of the partnership of equals. If federation were to proceed on

these lines it would be a federation of the United Kingdom and the Self-Governing Colonies only, whilst the Crown Colonies and Dependencies of the Crown would pass under the control of the Parliament of the new federation, just as they now lie under the control of the Parliament of the United Kingdom. This limitation of the application of the idea would not do away with—it would scarcely diminish—the difficulty of setting up a common tariff. The foregoing considerations would apparently lead to the conclusion that, if any steps are taken towards Imperial Federation, no attempts should at first be made to establish common trade duties.

A Common Parliament. A Union of the self-governing elements of the Empire might be entertained for the limited purpose of establishing a common Army, a common Navy, a common government of dependencies and a common control of foreign relations; but it must not be concealed that even this limited federation would have difficulties of its own. If the charge of the Army and Navy is to become Imperial, and no Imperial system of Customs and Excise duties is practicable, contributions would have to be levied in some prescribed ratios from the component parts of the Empire, and such contributions would require revision at stated periods. But above and beyond this lies the construction of the common Government. The first thought is naturally to follow the precedent of the existing Parliament of the United Kingdom as it has been followed in Canada, and with some variations in Australia. Proceeding from this principle, a House of Commons would be established in which the different parts of the Empire would be represented in proportion to their population; in which case the representation of the United Kingdom would outnumber, and if united could defeat, the combination of all the rest. This should not be alarming since, in relation to the matters that would come under the common Federated Parliament, the predominant party of the existing Home Parliament overrules the whole Empire. If a majority at Westminster can now

determine issues of peace and war affecting the colonies of the furthest West and South there would be a diminution and not an aggravation of the influence of the United Kingdom in a change which would associate a mixed representation of it with the representatives of the Self-Governing Colonies. It is in the task of constructing the Second Chamber that the greatest, perhaps the insuperable difficulty lies. Very few would be prepared to dispense with a Second Chamber altogether, and these few would probably suggest as a substitute some internal method of controlling the action of the single House, which would bring its own difficulties. Those who desire Imperial Federation in any shape must face the construction of the Senate. Here unfortunately precedents do not help us. The House of Lords discharges its functions as a branch of the Parliament of the United Kingdom, but no one has seen the possibility of reproducing it elsewhere. In different colonies different experiments have been tried, and with the results of their experience before them the framers of the Canadian constitution have adopted one principle, and the framers of the Australian constitution another. The latter, which gives each colony equal representation in the second House, cannot be entertained as a practicable suggestion towards Imperial Federation, whilst the former, allowing life-senators to be nominated on the advice of the Ministers of the day, has not proved a commanding success. The separate Parliaments of the federated elements might be authorised to elect senators not of an equal number as in the United States but in some proportion to their contributions to the common cost of the Federation; but if an attempt is made to follow out this suggestion in detail by considering how such senators should be chosen, what should be their tenure of office, and whether the body should be recruited in parts or altogether, it must be soon felt that speculation is proceeding far ahead of the point to which the common-sense of the Empire is prepared to follow.

The "Delegations" Plan. It would not be wonderful if the glimpses of such a novel and strange machinery

should produce a recoil, and lead to the conclusion either that Imperial Federation must be given up altogether or that it would be better in the first place to be content with constitutional delegations from each self-governing part of the Empire, to which the Ministers for Foreign Affairs, for the Dependencies, and for the Army and Navy should make account and be responsible. This suggestion raises again the question of the relative numbers of such delegations, and if this difficulty were overcome practical men would ask whether the experience of Austria-Hungary was to be regarded as the recommendation of the proposed system, and whether apart from this it was conceivable that the Parliament of the United Kingdom should be prepared to hand over its highest functions to a combination in which it would indeed have a voice, but whose character and future action no man could pretend to foresee. The conclusion would be that on the whole we had better wait. The government of the Empire has been slowly developed out of the past. It has grown to be what it is. It will probably continue to grow, adapting itself to new circumstances and satisfying new necessities. The subordinate Federations which have come and are coming into being are part, but only part, of this movement. In the fulness of time they have come into being, and it is not yet known what they will be. Still less can it be discerned how the evolution of the problem of the government of subject-races will result in an association of the governing and the governed —an incorporation of the latter in a new citizenship, select perhaps at first but widening with time as tried and tested by experience. We may wait and watch what will follow, not altogether stumbling in darkness, but conscious that we can peer but a little forward on the path which we may hope will preserve in the future the continuity of the past.

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